

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA, )  
PLAINTIFF, )  
VS. )  
RAMESH "SUNNY" BALWANI, )  
DEFENDANT. )  
) CR-18-00258-EJD  
) SAN JOSE, CALIFORNIA  
) MAY 18, 2022  
) VOLUME 31  
) PAGES 5872 - 6157

TRANSCRIPT OF TRIAL PROCEEDINGS  
BEFORE THE HONORABLE EDWARD J. DAVILA  
UNITED STATES DISTRICT JUDGE

## A P P E A R A N C E S:

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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

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1 SAN JOSE, CALIFORNIA

MAY 18, 2022

2 P R O C E E D I N G S

09:05AM 3 (COURT CONVENED AT 9:05 A.M.)

09:05AM 4 (JURY IN AT 9:05 A.M.)

09:05AM 5 THE COURT: WE ARE BACK ON THE RECORD IN THE BALWANI

09:05AM 6 MATTER. ALL COUNSEL ARE PRESENT. MR. BALWANI IS PRESENT.

09:05AM 7 OUR JURORS ARE PRESENT.

09:06AM 8 GOOD MORNING, LADIES AND GENTLEMEN.

09:06AM 9 BEFORE WE START TESTIMONY, LET ME ASK THE JURORS THE

09:06AM 10 QUESTION: HAVE ANY OF YOU HAD OCCASION TO LEARN ABOUT, READ,

09:06AM 11 DISCUSS, OR IN ANY WAY DO ANY INVESTIGATION ABOUT THIS CASE

09:06AM 12 DURING OUR BREAK?

09:06AM 13 IF SO, PLEASE RAISE YOUR HAND.

09:06AM 14 THANK YOU. I SEE NO HANDS. THANK YOU VERY MUCH.

09:06AM 15 DOES THE GOVERNMENT HAVE A WITNESS TO CALL?

09:06AM 16 MR. SCHENK: YES, YOUR HONOR.

09:06AM 17 THE UNITED STATES CALLS DR. MARK BURNES.

09:06AM 18 THE COURT: THANK YOU.

09:07AM 19 (PAUSE IN PROCEEDINGS.)

09:07AM 20 THE COURT: GOOD MORNING, SIR. IF YOU WOULD COME

09:07AM 21 FORWARD.

09:07AM 22 I'LL INVITE YOU TO STAND OVER HERE WHILE YOU FACE OUR

09:07AM 23 COURTROOM DEPUTY. IF YOU WOULD RAISE YOUR RIGHT HAND, SHE HAS

09:07AM 24 A QUESTION FOR YOU.

09:07AM 25 (**GOVERNMENT'S WITNESS, MARK BURNES, WAS SWORN.**)

09:07AM 1 THE WITNESS: YES, I DO.

09:07AM 2 THE CLERK: THANK YOU.

09:07AM 3 THE COURT: PLEASE HAVE A SEAT UP HERE, SIR.

09:07AM 4 LET ME INVITE YOU TO MAKE YOURSELF COMFORTABLE. ADJUST

09:07AM 5 THAT CHAIR AND MICROPHONE AS YOU NEED.

09:07AM 6 AND THERE'S SOME WATER THERE SHOULD YOU CARE TO --

09:07AM 7 THE WITNESS: THANK YOU.

09:07AM 8 THE COURT: -- REFRESH YOURSELF.

09:07AM 9 OF COURSE.

09:07AM 10 AND WHEN YOU ARE COMFORTABLE, WOULD YOU PLEASE STATE YOUR

09:07AM 11 NAME AND THEN SPELL IT, PLEASE.

09:07AM 12 THE WITNESS: DR. MARK BURNES, B-U-R-N-E-S.

09:07AM 13 THE COURT: AND IS MARK M-A-R-K?

09:08AM 14 THE WITNESS: YES.

09:08AM 15 THE COURT: GREAT. THANK YOU.

09:08AM 16 MR. SCHENK: THANK YOU VERY MUCH, YOUR HONOR.

09:08AM 17 **DIRECT EXAMINATION**

09:08AM 18 BY MR. SCHENK:

09:08AM 19 Q. GOOD MORNING, DR. BURNES.

09:08AM 20 A. GOOD MORNING.

09:08AM 21 Q. I SEE YOU'RE GOING TO TESTIFY THIS MORNING WITH A CLEAR

09:08AM 22 MASK ON; IS THAT CORRECT?

09:08AM 23 A. YES.

09:08AM 24 MR. SCHENK: AND I BELIEVE THERE'S NO OBJECTION FROM

09:08AM 25 THE DEFENSE TO THAT PROCEDURE, YOUR HONOR.

09:08AM 1 MR. COOPERSMITH: THERE IS NONE, YOUR HONOR.

09:08AM 2 THE COURT: ALL RIGHT. THANK YOU.

09:08AM 3 MR. SCHENK: THANK YOU.

09:08AM 4 Q. DR. BURNES, ARE YOU CURRENTLY EMPLOYED?

09:08AM 5 A. I'M SELF-EMPLOYED AS A PHYSICIAN.

09:08AM 6 Q. YOU SAID AS A PHYSICIAN. AS A MEDICAL DOCTOR?

09:08AM 7 A. YES.

09:08AM 8 Q. AND WHAT TYPE OF MEDICINE DO YOU PRACTICE?

09:08AM 9 A. INTERNAL MEDICINE.

09:08AM 10 Q. HOW LONG HAVE YOU DONE THAT?

09:08AM 11 A. SINCE 1992.

09:08AM 12 Q. WOULD YOU BRIEFLY DESCRIBE FOR THE JURY YOUR EDUCATIONAL

09:08AM 13 BACKGROUND?

09:08AM 14 A. I WENT TO UNDERGRADUATE SANTA CLARA UNIVERSITY HERE.

09:08AM 15 THEN I WAS GONE INTO THE MILITARY SERVICE FOR ABOUT SIX

09:08AM 16 YEARS.

09:08AM 17 THEN I WENT TO POST-GRADUATE SCHOOL IN TUCSON, ARIZONA,

09:08AM 18 THE UNIVERSITY OF ARIZONA, FOR ONE YEAR.

09:08AM 19 THEN I APPLIED AND WAS ACCEPTED TO MEDICAL SCHOOL AT

09:09AM 20 ST. LOUIS UNIVERSITY IN ST. LOUIS, MISSOURI IN 1985 TIMEFRAME.

09:09AM 21 I GRADUATED FROM THERE IN 1989.

09:09AM 22 I PERFORMED RESIDENCY IN PHOENIX, ARIZONA, AND I COMPLETED

09:09AM 23 IN 1992.

09:09AM 24 AND THEN I OPENED PRIVATE PRACTICE AT THAT TIME IN

09:09AM 25 PHOENIX.

09:09AM 1 Q. YOU OPENED YOUR OWN PRIVATE PRACTICE IN THE PHOENIX AREA  
09:09AM 2 IN 1992?  
09:09AM 3 A. YES.  
09:09AM 4 Q. AND WHAT TYPE OF MEDICINE DO YOU PRACTICE AT THIS PRIVATE  
09:09AM 5 PRACTICE?  
09:09AM 6 A. INTERNAL MEDICINE, WHICH IS GENERALLY FOUNDING CARE FOR  
09:09AM 7 ADULTS AND ELDERLY, MOSTLY OLDER FOLKS.  
09:09AM 8 Q. YOU SAID INTERNAL MEDICINE IS GENERALLY TO CARE FOR, I'M  
09:09AM 9 SORRY?  
09:09AM 10 A. ADULTS. BUT MOST OF MY PRACTICE IS ELDERLY.  
09:09AM 11 Q. IN THE COURSE OF YOUR MEDICAL TRAINING, DID YOU GAIN  
09:09AM 12 EXPERIENCE WITH A BLOOD TEST THAT IS KNOWN AS PSA?  
09:09AM 13 A. YES.  
09:09AM 14 Q. WOULD YOU DESCRIBE THAT EXPERIENCE TO THE JURY, YOUR  
09:10AM 15 TRAINING?  
09:10AM 16 A. INITIALLY IT WAS -- THE TRAINING INVOLVED MEDICAL SCHOOL  
09:10AM 17 COURSES, FOLLOWED UP IN RESIDENCY, AND THEN IT'S BEEN PART OF  
09:10AM 18 MY PRACTICE FOR THE LAST 30 YEARS.  
09:10AM 19 Q. AND TELL ME ABOUT THAT PART. WHAT TYPE OF EXPERIENCE DO  
09:10AM 20 YOU HAVE WITH THE PSA BLOOD TEST THROUGH THE COURSE OF YOUR OWN  
09:10AM 21 PRIVATE PRACTICE?  
09:10AM 22 A. I'VE USED IT FOR HELPING DIAGNOSE EARLY PROSTATE CANCER  
09:10AM 23 PRIMARILY OVER THE LAST 30 YEARS.  
09:10AM 24 I'LL EXPLAIN FURTHER IF YOU NEED ME TO.  
09:10AM 25 Q. SURE. THANK YOU.

09:10AM 1 A. PSA STANDS FOR PROSTATIC SPECIFIC ANTIGEN. BASICALLY IT'S  
09:10AM 2 A WASTE PRODUCT IS THE WAY I EXPLAIN IT THAT COMES FROM THE  
09:10AM 3 PROSTATE GLAND AND GOES INTO THE BLOOD. AND IT'S PROPORTIONAL  
09:10AM 4 TO THE SIZE AND ACTIVITY OF THE PROSTATE GLAND.

09:11AM 5 SO AS MEN GET OLDER, THE PROSTATE GENERALLY GETS LARGER  
09:11AM 6 AND THE PSA RESULTS IN THE BLOOD GENERALLY TENDS TO FULLY RISE  
09:11AM 7 OVER TIME.

09:11AM 8 THE REASON WE MEASURE IT MOSTLY IN GENTLEMEN, MEN OVER AGE  
09:11AM 9 50 GENERALLY, IS YOU TRY AND DETECT A RISE OF USUALLY ABOUT  
09:11AM 10 SUSPICIOUS ENOUGH TO CONSIDER THAT PROSTATE CANCER MAY BE A  
09:11AM 11 POSSIBILITY.

09:11AM 12 Q. AND DID YOU JUST SAY TO DETECT A RISE?

09:11AM 13 A. YES. THE -- INITIALLY WHEN IT WAS DEVELOPED I BELIEVE BY  
09:11AM 14 THE NIH ABOUT 35 YEARS AGO OR SO, IT WAS TO BE USED AS A  
09:11AM 15 DETECTION TOOL FOR DOCTORS FOR PROSTATE CANCER, EARLY  
09:11AM 16 DETECTION.

09:11AM 17 AND THIS HAS NOT BEEN CHANGED ON THE LAB WORK, BUT YOU'LL  
09:11AM 18 SEE RANGES THAT I MIGHT SHOW YOU LATER IN LAB WORK THAT RANGE  
09:11AM 19 FROM 0 TO 4 AS THE NORMAL RANGE, BUT THAT'S NOT REALLY USEFUL.

09:12AM 20 FROM WHAT I DESCRIBED, AS THE PROSTATE GROWS, THE PSA IN  
09:12AM 21 THE BLOOD SLOWLY RISES AT DIFFERENT RATES IN DIFFERENT MEN.

09:12AM 22 SO WHAT WE'RE LOOKING FOR IS NOT THE TOTAL VALUE. IT  
09:12AM 23 SHOULD BE A SLOW, STEADY RISE IN A FAIRLY STRAIGHT LINE.

09:12AM 24 BUT IF WE SEE IT JUMP UP MORE THAN TWO OR THREE TIMES,  
09:12AM 25 THEN WE GET SUSPICIOUS FOR THE POSSIBILITY OF PROSTATE CANCER.

09:12AM 1 Q. AND IN THE COURSE OF YOUR PRACTICE, HAVE YOU HAD AN  
09:12AM 2 OPPORTUNITY TO ORDER THE PSA BLOOD TEST FOR YOUR PATIENTS?  
09:12AM 3 A. YES.  
09:12AM 4 Q. DO YOU HAVE THE ABILITY TO ESTIMATE FOR US HOW MANY TIMES  
09:12AM 5 YOU'VE ORDERED A PSA TEST SINCE YOU OPENED YOUR PRACTICE IN  
09:12AM 6 '92?  
09:12AM 7 A. WELL, FOR 30 YEARS FOR MEN OVER 50 -- I HAVE A SMALL  
09:12AM 8 PRACTICE NOW, BUT OVER THE YEARS THE NUMBER OF TESTS IS  
09:13AM 9 PROBABLY OVER 10,000.  
09:13AM 10 Q. AND HAVE YOU HAD THE OPPORTUNITY TO SEE OR EVALUATE THE  
09:13AM 11 RESULTS FROM THOSE ORDERS, THE ACTUAL PSA SCORES?  
09:13AM 12 A. YES, I DO THAT ROUTINELY.  
09:13AM 13 Q. AND WHEN YOU'VE EVALUATED THOSE SCORES, HAVE YOU HAD THE  
09:13AM 14 OPPORTUNITY TO EVALUATE SCORES BOTH WITHIN THE REFERENCE RANGE  
09:13AM 15 THAT YOU JUST DESCRIBED TO US AND OUTSIDE OF THE REFERENCE  
09:13AM 16 RANGE?  
09:13AM 17 A. YES.  
09:13AM 18 Q. HAVE YOU HAD THE OPPORTUNITY TO EVALUATE SCORES THAT ARE  
09:13AM 19 ABNORMAL OR MUCH HIGHER THAN THE REFERENCE RANGE?  
09:13AM 20 A. YES.  
09:13AM 21 Q. HAVE YOU -- DO YOU HAVE THE ABILITY TO ESTIMATE FOR US HOW  
09:13AM 22 OFTEN THAT OCCURS, THAT IS, YOU RECEIVE AN ABNORMAL SCORE?  
09:13AM 23 A. WHAT I WOULD CONSIDER ABNORMAL, THAT WOULD INSTILL SOME  
09:13AM 24 SUSPICION TO LOOK FURTHER, PROBABLY, PROBABLY ABOUT, I'M  
09:13AM 25 GUESSING, ABOUT 4- TO 500.

09:14AM 1 Q. YOU MENTIONED A MOMENT AGO THAT THE PSA TEST IS USED AS A  
09:14AM 2 TOOL TO HELP DIAGNOSE PROSTATE CANCER; IS THAT CORRECT?  
09:14AM 3 A. THAT'S ITS PRIMARY PURPOSE.  
09:14AM 4 Q. HAVE YOU HAD THE OPPORTUNITY DURING YOUR PRACTICE TO  
09:14AM 5 DIAGNOSE PROSTATE CANCER FOR SOME OF YOUR PATIENTS?  
09:14AM 6 A. YES.  
09:14AM 7 Q. AND DO YOU KNOW HOW OFTEN THAT OCCURS? HOW MANY  
09:14AM 8 PATIENTS --  
09:14AM 9 A. OVER THE LAST 30 YEARS, THIS HAS HELPED ME DIAGNOSE EARLY  
09:14AM 10 ABOUT 200 PATIENTS WITH PROSTATE CANCER.  
09:14AM 11 Q. THANK YOU.  
09:14AM 12 YOUR HONOR, THE GOVERNMENT NOW OFFERS DR. BURNES AS AN  
09:14AM 13 EXPERT IN THE AREA OF DIAGNOSING PROSTATE CANCER, THE BLOOD  
09:14AM 14 TEST FOR PSA, AND INTERPRETING PSA TEST RESULTS.  
09:14AM 15 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.  
09:14AM 16 THE COURT: THANK YOU.  
09:14AM 17 THIS WITNESS WILL BE PERMITTED, LADIES AND GENTLEMEN, TO  
09:14AM 18 TESTIFY AS AN EXPERT AS TO THOSE AREAS AS ARTICULATED BY  
09:14AM 19 MR. SCHENK.  
09:14AM 20 YOU WILL BE GIVEN, IN THE FINAL INSTRUCTIONS, INSTRUCTIONS  
09:14AM 21 ON HOW YOU MAY USE THIS TESTIMONY.  
09:15AM 22 MR. SCHENK.  
09:15AM 23 MR. SCHENK: THANK YOU.  
09:15AM 24 Q. DR. BURNES, I'D NOW LIKE TO ASK YOU SOME QUESTIONS ABOUT A  
09:15AM 25 PARTICULAR BLOOD TESTING LAB BY THE NAME OF THERANOS.

09:15AM 1 ARE YOU FAMILIAR WITH THE COMPANY THERANOS?

09:15AM 2 A. YES.

09:15AM 3 Q. DO YOU REMEMBER HOW YOU FIRST BECAME FAMILIAR WITH

09:15AM 4 THERANOS?

09:15AM 5 A. I BELIEVE IT WAS A MARKETING REPRESENTATIVE THAT CAME TO

09:15AM 6 THE OFFICE.

09:15AM 7 Q. CAME TO YOUR OFFICE?

09:15AM 8 A. YES.

09:15AM 9 Q. AND, AGAIN, WHERE IS THAT LOCATED?

09:15AM 10 A. IN GOODYEAR, ARIZONA.

09:15AM 11 Q. IS GOODYEAR NEAR THE PHOENIX AREA?

09:15AM 12 A. YES, IT'S PART OF THE METROPOLITAN AREA.

09:15AM 13 Q. AND WHAT DO YOU RECALL ABOUT THE LAB, THERANOS? WHAT WAS

09:15AM 14 IT ADVERTISED TO YOU AS OFFERING?

09:15AM 15 A. IT WAS OFFERING A NEW FORM OF LAB TESTING, WHICH I WAS

09:15AM 16 VERY EXCITED TO HEAR ABOUT. AS A -- WE WERE TRYING TO -- THE

09:15AM 17 TEST THAT I ROUTINELY DO AS A FAMILY DOCTOR, CBC'S, CHEMISTRY

09:16AM 18 TESTS AND THE LIKE, AND SO HAVING TO DRAW MULTIPLE TUBES OF

09:16AM 19 BLOOD FROM PATIENTS, AND MUCH OF THAT GETS TOSSED ANYWAY.

09:16AM 20 WITH A PINPRICK, THEY SHOWED THAT THEY COULD OBTAIN MOST

09:16AM 21 OF THESE TESTS THAT WAY, WHICH IS A DROP OF BLOOD, AND ON THAT,

09:16AM 22 A MUCH SUBSTANTIALLY REDUCED COST.

09:16AM 23 SO IT WAS VERY EXCITING FOR THIS NEW LAB AND IT HELD

09:16AM 24 PROMISE FOR THEM.

09:16AM 25 Q. YOU DESCRIBED A PINPRICK OF BLOOD. DO YOU KNOW WHAT PART

09:16AM 1 OF THE BODY THAT BLOOD WAS DRAWN?

09:16AM 2 A. I ACTUALLY NEVER SAW IT. I ASSUME IT WAS FROM THE FINGER.

09:16AM 3 Q. YOU SAID THAT THE TECHNOLOGY WAS VERY EXCITING BECAUSE OF

09:16AM 4 THE SIZE DIFFERENCE BETWEEN THE THERANOS --

09:16AM 5 A. YES.

09:16AM 6 THE COURT: YOU KNOW --

09:16AM 7 THE WITNESS: WHAT WAS THE QUESTION AGAIN, SIR?

09:16AM 8 THE COURT: WHAT WOULD BE HELPFUL, DOCTOR, IS TO LET

09:16AM 9 HIM FINISH THE QUESTION BEFORE YOU ANSWER, AND THAT WOULD HELP

09:16AM 10 THE COURT REPORTER, TOO, TO REPORT EVERYTHING AND THE QUESTION

09:17AM 11 AND ANSWER.

09:17AM 12 THE WITNESS: I APOLOGIZE.

09:17AM 13 THE COURT: NO. THAT'S QUITE ALL RIGHT.

09:17AM 14 I'M GOING TO ASK MR. SCHENK TO ASK HIS QUESTION AGAIN,

09:17AM 15 PLEASE.

09:17AM 16 MR. SCHENK: YES. THANK YOU.

09:17AM 17 Q. YOU DESCRIBED A MEASURE OF EXCITEMENT REGARDING THE

09:17AM 18 THERANOS LAB TESTING BECAUSE OF THE SIZE OF THE BLOOD DRAW AND

09:17AM 19 BECAUSE OF THE COST; IS THAT RIGHT?

09:17AM 20 A. YES.

09:17AM 21 Q. AND AS A RESULT OF THAT EXCITEMENT OR INTEREST, DID YOU

09:17AM 22 SUGGEST THAT SOME OF YOUR PATIENTS GET THEIR LABS DONE AT

09:17AM 23 THERANOS?

09:17AM 24 A. YES.

09:17AM 25 Q. ARE YOU FAMILIAR WITH A PATIENT BY THE NAME OF

09:17AM 1 MEHRL ELLSWORTH?

09:17AM 2 AND LET ME SPELL THAT. IT'S M-E-H-R-L, AND THE LAST NAME

09:17AM 3 IS E-L-L-S-W-O-R-T-H.

09:17AM 4 ARE YOU FAMILIAR WITH DR. ELLSWORTH?

09:17AM 5 A. YES.

09:17AM 6 Q. AND WAS HE A PATIENT OF YOURS AROUND THE 2015 TIMEFRAME?

09:17AM 7 A. YES.

09:17AM 8 MR. SCHENK: YOUR HONOR, MAY I APPROACH?

09:17AM 9 THE COURT: YES.

09:17AM 10 MR. SCHENK: THANK YOU.

09:18AM 11 Q. DOCTOR, I'VE HANDED YOU A BINDER OF EXHIBITS. I WONDER IF

09:18AM 12 YOU'LL TURN TO THE SECOND TAB IN THE BINDER. IT'S EXHIBIT

09:18AM 13 NUMBER 4938.

09:18AM 14 ARE YOU FAMILIAR WITH THE DOCUMENTS LOCATED AT TAB 4938?

09:18AM 15 A. YES.

09:18AM 16 Q. AND WHAT ARE THESE DOCUMENTS?

09:18AM 17 A. THESE ARE LABORATORY RESULTS FROM THERANOS.

09:18AM 18 Q. FOR WHICH INDIVIDUAL?

09:18AM 19 A. DR. ELLSWORTH.

09:18AM 20 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OFFERS 4938.

09:18AM 21 MR. COOPERSMITH: YOUR HONOR, WE OBJECT TO THE FIRST

09:18AM 22 PAGE, WHICH LOOKS TO BE JUST A DECLARATION.

09:18AM 23 ALSO, THOUGH, THE SECOND PAGE AND THE THIRD PAGE.

09:18AM 24 AND REGARDING THE SECOND AND THE THIRD PAGE, YOUR HONOR,

09:19AM 25 WE WOULD POINT YOU TO THE RESULTS SECTION OF BOTH OF THOSE, AND

09:19AM 1 WE OBJECT TO THOSE PAGES UNDER 401 AND 403 AND BASED ON  
09:19AM 2 PREVIOUS DISCUSSIONS WITH THE COURT.

09:19AM 3 WE DO NOT OBJECT TO PAGES 4, 5, 6, 7 AND 8 OF THE EXHIBIT.

09:19AM 4 THE COURT: MR. SCHENK.

09:19AM 5 MR. SCHENK: YOUR HONOR, I DO NOT NEED THE FIRST  
09:19AM 6 PAGE, SO I WOULD SEEK TO ADMIT PAGES 2 THROUGH 8.

09:19AM 7 WITH REGARD TO PAGES 2 AND 3, THEY ARE RECORDS BOTH OF  
09:19AM 8 THERANOS AND OF DR. BURNES'S PRACTICE. THEY WERE DOCUMENTS  
09:19AM 9 PROVIDED TO DR. BURNES, AND ALSO TO THE PATIENT AFTER RECEIVING  
09:19AM 10 TESTS AT THERANOS, AND THEY ARE AN IMPORTANT PART OF THE STORY  
09:20AM 11 THAT BOTH DR. BURNES AND DR. ELLSWORTH CAN TESTIFY TO.

09:20AM 12 MR. COOPERSMITH: YOUR HONOR, I WOULD ALSO POINT THE  
09:20AM 13 COURT TO THE REPORT DATES ON PAGES 2 AND 3 AT THE BOTTOM  
09:20AM 14 CENTER, AND IT'S IN MARCH OF 2016, AND THAT'S PART OF OUR  
09:20AM 15 OBJECTION, YOUR HONOR.

09:20AM 16 THE COURT: ANYTHING ON THAT, MR. SCHENK?

09:20AM 17 MR. SCHENK: NO, YOUR HONOR. THANK YOU.

09:20AM 18 THE COURT: ALL RIGHT. THANK YOU.

09:20AM 19 I'LL ADMIT THESE OVER OBJECTION, AND THE PROBATIVE VALUE  
09:20AM 20 OF THESE OUTWEIGH ANY PREJUDICE THAT EXISTS.

09:20AM 21 SO THEY'RE ADMITTED, AND THEY MAY BE PUBLISHED.

09:20AM 22 (GOVERNMENT'S EXHIBIT 4938, PAGES 2 AND 8, WAS RECEIVED.)

09:20AM 23 MR. SCHENK: THANK YOU, YOUR HONOR.

09:20AM 24 Q. IF WE COULD START, DR. BURNES, ON PAGE 7 OF THIS EXHIBIT.  
09:21AM 25 YOUR HONOR, MAY I HAVE JUST ONE MOMENT?

09:21AM 1 THE COURT: SURE.

09:21AM 2 (PAUSE IN PROCEEDINGS.)

09:21AM 3 BY MR. SCHENK:

09:21AM 4 Q. DR. BURNES, ON THE SCREEN IN FRONT OF YOU, DO YOU SEE THE

09:21AM 5 EXHIBIT 4938, PAGE 7?

09:21AM 6 A. YES.

09:21AM 7 Q. AND THE PATIENT'S NAME ON THIS VERSION HAS BEEN REDACTED;

09:21AM 8 IS THAT CORRECT?

09:21AM 9 A. YES.

09:21AM 10 Q. THE VERSION THAT YOU HAVE IN FRONT OF YOU, DOES THAT

09:21AM 11 VERSION HAVE THE PATIENT'S NAME?

09:21AM 12 A. YES.

09:21AM 13 Q. WHAT IS THE PATIENT'S NAME?

09:21AM 14 A. MEHRL, M-E-H-R-L, ELLSWORTH, E-L-L-S-W-O-R-T-H.

09:21AM 15 Q. THANK YOU.

09:21AM 16 I'D LIKE TO ASK YOU A FEW QUESTIONS ABOUT THIS DOCUMENT,

09:22AM 17 BUT, FIRST, DID YOU HAVE OCCASION TO ORDER A PSA TEST FOR

09:22AM 18 DR. ELLSWORTH?

09:22AM 19 A. YES.

09:22AM 20 Q. AND PLEASE DESCRIBE THAT TO THE JURY. WHAT WERE THE

09:22AM 21 CIRCUMSTANCES?

09:22AM 22 A. THE PATIENT WAS LEAVING THE COUNTRY IN A COUPLE OF MONTHS

09:22AM 23 FOR MISSIONARY WORK OVERSEAS FOR ABOUT TWO YEARS, AND HIS

09:22AM 24 CHURCH ASKED THAT A RECENT PSA BE OBTAINED.

09:22AM 25 NORMALLY WE DO THAT WITH OUR WELLNESS EXAMS AND ANNUAL

09:22AM 1 PHYSICALS IS OUT OF SEQUENCE THEN.

09:22AM 2 PART OF THE ISSUE IS THAT THAT TEST WAS FAIRLY EXPENSIVE,

09:22AM 3 AND SO THAT'S PART OF THE REASON THAT I WOULD USE THERANOS

09:22AM 4 SOMETIMES.

09:22AM 5 SO AT THIS TIME I SENT DR. ELLSWORTH TO OBTAIN A PSA FOR

09:22AM 6 HIS MISSIONARY CLEARANCE.

09:22AM 7 Q. YOU SAID THAT THE PSA TEST WAS OUT OF SEQUENCE.

09:22AM 8 DO YOU MEAN OUTSIDE OF THE NORMAL ANNUAL PHYSICAL THAT YOU

09:23AM 9 DESCRIBED?

09:23AM 10 A. YES.

09:23AM 11 AND SO INSURANCE WILL NORMALLY COVER IT ABOUT EVERY YEAR

09:23AM 12 OR SO. I GET THE TEST ABOUT EVERY YEAR OR YEAR AND A HALF OR

09:23AM 13 SO FOR MEN OVER 50.

09:23AM 14 I DON'T RECALL EXACTLY THE CIRCUMSTANCES, BUT IT WAS

09:23AM 15 REQUESTED BY THE TIMING OF THIS CHURCH, SO HE WAS PROBABLY

09:23AM 16 GOING TO HAVE TO PAY FOR IT, SO THAT'S WHY WE USED THE LAB.

09:23AM 17 Q. THANK YOU.

09:23AM 18 NOW I'D LIKE TO ASK YOU ABOUT PORTIONS OF THE DOCUMENT.

09:23AM 19 FIRST, AT THE VERY TOP, DO YOU SEE A FAX HEADER? IT'S

09:23AM 20 ALSO ZOOMED IN ON THE SCREEN IF THAT'S EASIER.

09:23AM 21 A. OKAY. YES, UH-HUH.

09:23AM 22 Q. AND WHAT IS THE DATE?

09:23AM 23 A. MAY 16TH, 2015.

09:23AM 24 Q. THANK YOU.

09:23AM 25 AND WAS IT YOUR PRACTICE TO HAVE YOUR PATIENT'S LAB

09:23AM 1 RESULTS FAXED TO YOUR OFFICE?

09:23AM 2 A. YES.

09:23AM 3 Q. WOULD THAT FAX HAVE ARRIVED AT YOUR OFFICE IN ARIZONA?

09:23AM 4 A. YES.

09:23AM 5 Q. I WOULD LIKE TO NOW ZOOM IN ON THE VISIT DATE SECTION.

09:24AM 6 IT'S JUST ABOVE THE SUMMARY OF ABNORMAL RESULTS TABLE.

09:24AM 7 DO YOU SEE THAT?

09:24AM 8 A. YES.

09:24AM 9 Q. AND WHAT IS THE VISIT DATE?

09:24AM 10 A. MAY 14TH, 2015.

09:24AM 11 Q. DO YOU RECALL WHETHER DR. ELLSWORTH HAD SEVERAL PSA TESTS

09:24AM 12 CONDUCTED AT THERANOS?

09:24AM 13 A. YES.

09:24AM 14 Q. AND WAS THIS THE FIRST ONE?

09:24AM 15 A. YES.

09:24AM 16 Q. NOW I'D LIKE TO SHOW YOU UNDER THE SECTION THAT IS TITLED

09:24AM 17 PSA, TOTAL.

09:24AM 18 DO YOU SEE THAT?

09:24AM 19 A. YES.

09:24AM 20 Q. IT SAYS PROSTATE SPECIFIC ANTIGEN TOTAL, AND THEN THERE'S

09:24AM 21 A RESULT.

09:24AM 22 WHAT IS THE RESULT?

09:24AM 23 A. 26.1.

09:24AM 24 Q. WHAT DOES THAT MEAN TO YOU?

09:24AM 25 A. THAT'S ELEVATED SIGNIFICANTLY.

09:24AM 1 Q. AND WHEN YOU SAY "ELEVATED," DO YOU MEAN IN RELATION TO  
09:24AM 2 PRIOR SCORES FOR DR. ELLSWORTH?

09:25AM 3 A. NOT ONLY FOR HIS PRIOR SCORES, BUT THAT LEVEL OF ELEVATION  
09:25AM 4 IS CONCERNING NO MATTER WHAT HIS PREVIOUS SCORES HAD BEEN.

09:25AM 5 Q. SO IT'S OBJECTIVELY HIGH OR ELEVATED?

09:25AM 6 A. YES.

09:25AM 7 Q. THANK YOU.

09:25AM 8 A. IF I COULD CLARIFY FOR THE COURT AND THE JURY?

09:25AM 9 Q. PLEASE.

09:25AM 10 A. IF HE IS A NEW PATIENT THAT I HAD NEVER SEEN BEFORE AND I  
09:25AM 11 GOT THAT RESULT, I WOULD BE VERY, VERY CONCERNED THAT THAT  
09:25AM 12 RESULT WAS SO HIGH.

09:25AM 13 Q. AND HOW ABOUT IN THIS SITUATION WHERE DR. ELLSWORTH WAS A  
09:25AM 14 PREVIOUS PATIENT OF YOURS? DESCRIBE TO US YOUR REACTION OR  
09:25AM 15 RESPONSE TO THIS SCORE FOR DR. ELLSWORTH SPECIFICALLY.

09:25AM 16 A. I FELT MOST LIKELY IT WAS PROBABLY NOT CORRECT.  
09:25AM 17 HAVING DONE THIS FOR MANY YEARS, THAT LARGE OF A CHANGE --  
09:25AM 18 TRADITIONALLY IT WAS IN THE RANGE OF ABOUT 2, AND EVEN IF HE  
09:25AM 19 WAS TO DEVELOP PROSTATE CANCER OVER THE NEXT YEAR OR TWO, THAT  
09:25AM 20 WOULD BE AMAZING. I HAVE NEVER SEEN SUCH A RISE IN TWO YEARS.

09:25AM 21 Q. I'M SORRY. YOU SAID YOU NEVER HAVE SEEN?

09:26AM 22 A. SUCH A RISE IN TWO YEAR DUE TO THE PROSTATE CANCER. THERE  
09:26AM 23 WERE OTHER REASONS FOR IT TO BE HIGH.

09:26AM 24 Q. WHAT WOULD THOSE OTHER REASONS BE?

09:26AM 25 A. PROSTATE TRAUMA.

09:26AM 1 Q. AND DO YOU KNOW WHETHER THAT WAS PRESENT IN  
09:26AM 2 DR. ELLSWORTH'S CASE?  
09:26AM 3 A. NO.  
09:26AM 4 Q. AND BY "NO," YOU MEAN YOU DON'T KNOW, OR IT WAS NOT  
09:26AM 5 PRESENT?  
09:26AM 6 A. NO, IT WAS NOT PROSTATE TRAUMA. THE PATIENT WOULD KNOW IF  
09:26AM 7 HE HAD PROSTATE TRAUMA.  
09:26AM 8 Q. AND SO WAS THERE A BIOLOGICAL EXPLANATION FOR THIS HIGH OR  
09:26AM 9 THIS SIGNIFICANT RISE?  
09:26AM 10 A. I DO NOT BELIEVE SO.  
09:26AM 11 Q. A LITTLE FURTHER DOWN IN THE DOCUMENT IT LOOKS LIKE THERE  
09:26AM 12 IS SOME HANDWRITING.  
09:26AM 13 DO YOU SEE THAT?  
09:26AM 14 A. YES.  
09:26AM 15 Q. WHOSE HANDWRITING IS THAT?  
09:26AM 16 A. MINE.  
09:26AM 17 Q. AND COULD YOU READ THAT TO THE JURY? IT'S ALSO ZOOMED IN  
09:26AM 18 ON THE SCREEN IF THAT'S EASIER.  
09:26AM 19 A. VERY SIGNIFICANT RISE, RECHECK, MAYBE LAB ERROR.  
09:26AM 20 Q. AND TO THE RIGHT OF THERE, THERE LOOKS TO BE A STAMP WITH  
09:26AM 21 SOME HANDWRITING.  
09:26AM 22 DO YOU SEE THAT?  
09:26AM 23 A. YES.  
09:26AM 24 Q. WHAT IS THIS?  
09:26AM 25 A. THIS IS OUR STANDARD STAMP FOR WHEN WE RECEIVE LAB WORK.

09:27AM 1 IT'S SORT OF -- IT'S A CHECK AND BALANCE.

09:27AM 2 SO INITIALLY IT'S INITIALLED BY WHOEVER RECEIVES IT. THEY

09:27AM 3 PUT THE DATE AND THEN INITIAL IT.

09:27AM 4 THEN IT'S FORWARDED TO ME.

09:27AM 5 AND THEN I WILL INITIAL IT AND THEN DECIDE IF -- I'LL JUST

09:27AM 6 HAVE THE MEDICAL ASSISTANT CALL THE PATIENT IF IT LOOKS NORMAL,

09:27AM 7 OR IF IT'S NOT NORMAL, THEN I'LL CALL THE PATIENT AND TALK TO

09:27AM 8 THEM.

09:27AM 9 Q. AND WE SEE -- I'M SORRY.

09:27AM 10 A. AND THAT LAST THING THAT SAYS NOTIFIED PATIENT, THAT IS

09:27AM 11 WHO NOTIFIES THE PATIENT, EITHER MYSELF OR AN OFFICE STAFF

09:27AM 12 MEMBER.

09:27AM 13 Q. THANK YOU. AND I WAS GOING TO ASK YOU ABOUT THAT.

09:27AM 14 A. THE NOTIFIED, DOES THAT SAY PT?

09:27AM 15 Q. THAT'S ABBREVIATION FOR PATIENT.

09:27AM 16 A. THERE'S A DATE OF MAY 18TH.

09:27AM 17 Q. WHAT DOES THAT MEAN?

09:27AM 18 A. THAT'S THE DATE THAT I CONTACTED THE PATIENT.

09:27AM 19 Q. THERE'S A LINE WITH THE TITLE WHO AND MAYBE SOME INITIALS.

09:28AM 20 A. IS THAT RIGHT?

09:28AM 21 Q. YES.

09:28AM 22 A. ARE THOSE YOUR INITIALS?

09:28AM 23 Q. YES.

09:28AM 24 A. AND SO DOES THAT MEAN THAT YOU CONTACTED DR. ELLSWORTH TO

09:28AM 25 DISCUSS THIS SCORE?

09:28AM 1 A. YES.

09:28AM 2 Q. IF YOU'LL NOW TURN ONE PAGE PRIOR IN THE EXHIBIT, PAGE 6.

09:28AM 3 WHAT ARE WE LOOKING AT ON PAGE 6?

09:28AM 4 A. ANOTHER PROSTATE TEST.

09:28AM 5 Q. IF YOU COULD LOOK AT THE VISIT DATE, IT'S JUST ABOVE

09:28AM 6 PSA 3?

09:28AM 7 A. MAY 18, 2015.

09:28AM 8 Q. SO THE FIRST VISIT DATE FROM THE FIRST DOCUMENT WE LOOKED

09:28AM 9 AT WAS MAY 14.

09:28AM 10 DID YOU ASK THAT DR. ELLSWORTH OBTAIN A SECOND PSA TEST

09:28AM 11 AFTER THIS FIRST ONE THAT GENERATED A SCORE OF 26?

09:28AM 12 A. YES.

09:28AM 13 Q. AND IS THIS LAB REPORT THE SCORE AFTER THIS SECOND PSA LAB

09:29AM 14 TEST?

09:29AM 15 A. YES.

09:29AM 16 Q. UNDER PSA, TOTAL, WHAT IS THE SCORE THAT WAS RETURNED THIS

09:29AM 17 TIME?

09:29AM 18 A. 1.71.

09:29AM 19 Q. WHEN YOU RECEIVED THAT SCORE, HOW DID YOU FEEL ABOUT THIS

09:29AM 20 PARTICULAR LAB TEST?

09:29AM 21 A. I FELT IT WAS MUCH MORE CONSISTENT WITH THE EXPECTED

09:29AM 22 RESULT.

09:29AM 23 Q. THERE'S ALSO SOME HANDWRITING ON THIS DOCUMENT.

09:29AM 24 DO YOU SEE THAT?

09:29AM 25 A. YES.

09:29AM 1 Q. DO YOU RECOGNIZE THE HANDWRITING?

09:29AM 2 A. IT IS MINE.

09:29AM 3 Q. AND ALSO IF YOU WOULD READ THIS TO THE JURY. IT'S ON THE

09:29AM 4 SCREEN ZOOMED IN IF THAT'S EASIER.

09:29AM 5 A. MAY 19TH, 2015, "DISCUSS WITH THERANOS CLEARLY SOME FORM

09:29AM 6 OF LAB ERROR OCCURRED AND WILL WORK WITH THEM TO MAKE THIS

09:29AM 7 RIGHT FOR PATIENT AND CONFIRM ACCURACY. MOST LIKELY TESTING IN

09:30AM 8 ERROR FROM MAY 14TH."

09:30AM 9 Q. IN THESE NOTES THERE'S A REFERENCE TO A CONVERSATION WITH

09:30AM 10 THERANOS; IS THAT RIGHT? "DISCUSS WITH THERANOS"?

09:30AM 11 A. YES.

09:30AM 12 Q. AND DO YOU HAVE A RECOLLECTION OF REACHING OUT TO THERANOS

09:30AM 13 AFTER THESE TWO TESTS?

09:30AM 14 A. YES.

09:30AM 15 Q. AND DESCRIBE FOR THE JURY THAT. WHAT DID YOU DO?

09:30AM 16 A. WE REACHED OUT TO TRY AND CONTACT A MEDICAL DIRECTOR ABOUT

09:30AM 17 THE DISCREPANCY.

09:30AM 18 Q. WERE YOU SUCCESSFUL?

09:30AM 19 A. YES. THEY WERE VERY EASY TO CONTACT AND VERY PLEASANT TO

09:30AM 20 TALK TO.

09:30AM 21 Q. AND WHAT DO YOU RECALL FROM THAT COMMUNICATION?

09:30AM 22 DO YOU REMEMBER THE SUBJECT OR THE TOPICS THAT WERE

09:30AM 23 DISCUSSED?

09:30AM 24 A. I DISCUSSED THAT DR. ELLSWORTH'S USUAL RESULTS WERE

09:30AM 25 RUNNING THE RANGE OF ABOUT 2 AND WE GOT THE VALUE OF 26, WHICH

09:30AM 1 I BELIEVED WAS NOT CORRECT.

09:30AM 2 SO THEY HAD DR. ELLSWORTH REPEAT IT FOUR DAYS LATER AND IT

09:30AM 3 CAME BACK WITH A VALUE OF 1.71, WHICH WAS MORE CONSISTENT WITH

09:30AM 4 WHAT WAS EXPECTED.

09:31AM 5 SO I COULDN'T LET HIM GO FOR TWO YEARS WITH ONE LAB VERY

09:31AM 6 HIGH AND NORMAL -- I COULDN'T LET HIM GO WITH ONE LAB VALUE

09:31AM 7 VERY, VERY HIGH AND THE OTHER ONE NORMAL.

09:31AM 8 SO MY POINT WITH TALKING TO THERANOS WAS IF WE COULD

09:31AM 9 REPEAT THIS ONE MORE TIME AND IF WE GOT A THIRD ONE THAT WAS

09:31AM 10 CONSISTENT WITH WHAT I EXPECTED THE RESULT, I FELT COMFORTABLE

09:31AM 11 ENOUGH, I WOULD LET HIM GO.

09:31AM 12 Q. I SEE. DID YOU REQUEST THAT DR. ELLSWORTH HAVE A THIRD

09:31AM 13 PSA TEST?

09:31AM 14 A. YES.

09:31AM 15 Q. JUST BRIEFLY, DO WE ALSO SEE A SIMILAR STAMP THAT YOU

09:31AM 16 DESCRIBED TO THE JURY ON THAT FIRST LAB FORM HERE ON THE SECOND

09:31AM 17 ONE?

09:31AM 18 A. YES.

09:31AM 19 Q. AND DID YOU ALSO DISCUSS WITH DR. ELLSWORTH THIS SECOND

09:31AM 20 SCORE, THE 1.71 SCORE?

09:32AM 21 A. AT SOME POINT WHERE IT SAYS, "NOTIFY PATIENT, L.M." STANDS

09:32AM 22 FOR LEFT MESSAGE.

09:32AM 23 APPARENTLY HE WAS GONE OUT OF TOWN AT THAT TIME.

09:32AM 24 Q. I SEE. SO AT SOME POINT --

09:32AM 25 A. AT SOME POINT WE REACHED HIM.

09:32AM 1 Q. THANK YOU.

09:32AM 2 I'D LIKE YOU TO NOW TURN TO THE FIRST TAB IN THE BINDER.

09:32AM 3 IT'S EXHIBIT 4415.

09:32AM 4 DR. ELLSWORTH -- I'M SORRY. DR. BURNES, IS THIS A CHAIN

09:32AM 5 OF EMAILS THAT YOU WERE NOT ON?

09:32AM 6 A. YES.

09:32AM 7 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OFFERS 4415

09:32AM 8 UNDER 803(6).

09:32AM 9 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

09:32AM 10 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

09:32AM 11 (GOVERNMENT'S EXHIBIT 4415 WAS RECEIVED IN EVIDENCE.)

09:32AM 12 BY MR. SCHENK:

09:32AM 13 Q. DR. BURNES, IF WE COULD START ON PAGE 8 OF THIS DOCUMENT.

09:33AM 14 DO YOU SEE ON PAGE 8 AT THE BOTTOM AN EMAIL FROM AN

09:33AM 15 INDIVIDUAL NAMED AMELIA AGUIRRE?

09:33AM 16 A. YES.

09:33AM 17 Q. AND THE DATE OF THIS IS MAY 19TH, 2015.

09:33AM 18 DO YOU RECALL MAY 19TH FALLING RIGHT AROUND THIS TIME OF

09:33AM 19 DR. ELLSWORTH'S SECOND PSA TEST?

09:33AM 20 A. YES.

09:33AM 21 Q. AND IN THE EMAIL IT SAYS THAT DR. MARK BURNES CALLED TO

09:33AM 22 DISCUSS RESULTS FROM A PSA THAT WERE VERY HIGH AND A RETEST

09:33AM 23 THAT WAS NORMAL.

09:33AM 24 DO YOU SEE THAT? HIGH ON THE 14TH AND NORMAL ON THE 18TH?

09:33AM 25 A. YES.

09:33AM 1 Q. AND IS THIS THE CONVERSATION THAT YOU WERE JUST DESCRIBING  
09:33AM 2 A MOMENT AGO WHEN YOU REACHED OUT TO THERANOS TO DISCUSS  
09:33AM 3 DR. ELLSWORTH'S LAB RESULTS?  
09:33AM 4 A. COULD YOU REPHRASE THAT, PLEASE?  
09:33AM 5 Q. YES. DID YOU, IN FACT, REACH OUT TO THERANOS AROUND THIS  
09:33AM 6 TIME --  
09:33AM 7 A. YES.  
09:33AM 8 Q. -- AROUND MAY 19TH TO DISCUSS DR. ELLSWORTH'S LAB RESULTS?  
09:34AM 9 A. YES.  
09:34AM 10 Q. AND IF YOU WILL NOW TURN TO THE TOP OF PAGE 9 OF THIS  
09:34AM 11 EXHIBIT.  
09:34AM 12 THE EMAIL CONTINUES, "BECAUSE OF THIS, HE IS NOT CONVINCED  
09:34AM 13 THAT THE RESULTS FROM MAY 14TH BELONG TO HIS PATIENT."  
09:34AM 14 THE VERSION ON THE SCREEN IS REDACTED, DR. BURNES.  
09:34AM 15 IS THE VERSION IN YOUR BINDER UNREDACTED?  
09:34AM 16 A. THAT IS CORRECT.  
09:34AM 17 Q. AND WHAT NAME IS IN THE VERSION IN YOUR BINDER?  
09:34AM 18 A. M. ELLSWORTH.  
09:34AM 19 Q. YOU WERE, IT SAYS, CONCERNED THAT THE RESULTS FROM  
09:34AM 20 MAY 14TH MIGHT NOT BELONG TO DR. ELLSWORTH, BUT MAY BELONG TO A  
09:34AM 21 DIFFERENT PATIENT; IS THAT CORRECT?  
09:34AM 22 A. I DON'T RECOLLECT MY THINKING THAT WAS THE CAUSE AT THE  
09:34AM 23 TIME. IT COULD HAVE BEEN, BUT I DON'T REMEMBER THINKING THAT  
09:34AM 24 WAS THE ISSUE.  
09:34AM 25 Q. AND YOU DON'T HAVE A SPECIFIC RECOLLECTION OF EXPRESSING

09:34AM 1 THAT PARTICULAR CONCERN?

09:34AM 2 A. NO.

09:34AM 3 Q. IF WE COULD NOW TURN A FEW PAGES EARLIER IN THIS EMAIL

09:35AM 4 CHAIN, I'D LIKE TO DRAW YOUR ATTENTION TO PAGE 4.

09:35AM 5 ON PAGE 4, DO YOU SEE AN EMAIL THAT WAS AUTHORED BY

09:35AM 6 SOMEONE NAMED DANIEL YOUNG?

09:35AM 7 A. YES.

09:35AM 8 Q. IN THE EMAIL, DO YOU SEE WHERE DR. YOUNG WRITES,

09:35AM 9 "CHRISTIAN DOES NOT DO THOSE CALLS ANYMORE. DAN FLOREY HELPS

09:35AM 10 WITH THESE NOW"?

09:35AM 11 DO YOU SEE THAT?

09:35AM 12 A. YES.

09:35AM 13 Q. "DAN -- WE DON'T KNOW WHY THE FIRST SAMPLE CAME BACK SO

09:35AM 14 HIGH. IT WAS ACTUALLY RERUN, AND CONFIRMED HIGH ORIGINALLY. A

09:35AM 15 SAMPLE MIXUP IS POSSIBLE AS THE DOCTOR SUGGESTED, BUT HARD TO

09:35AM 16 CONFIRM AT THIS POINT."

09:35AM 17 DO YOU SEE THAT?

09:35AM 18 A. YES.

09:35AM 19 Q. IF NOW YOU'LL TURN TO PAGE 3.

09:35AM 20 ON THE BOTTOM HALF OF THE EMAIL, DO YOU SEE AN EMAIL FROM

09:36AM 21 DAN FLOREY IN -- WE'RE NOW IN JUNE, JUNE 15TH OF 2015?

09:36AM 22 A. YES.

09:36AM 23 Q. DR. BURNES, DID YOU ASK DR. ELLSWORTH TO HAVE A FOLLOWUP

09:36AM 24 PSA TEST, A THIRD ONE, IN JUNE OF 2015?

09:36AM 25 A. YES.

09:36AM 1 Q. IN THIS EMAIL, DO YOU SEE WHERE THERE IS INFORMATION  
09:36AM 2 TOWARDS THE BOTTOM, MAY 14TH, WITH AN ACCESSION NUMBER AND A  
09:36AM 3 PSA SCORE?  
09:36AM 4 A. YES.  
09:36AM 5 Q. AND THE PSA SCORE LISTED WAS 26.1; IS THAT RIGHT?  
09:36AM 6 A. YES.  
09:36AM 7 Q. WAS THAT THE FIRST SCORE THAT WE SAW FOR DR. ELLSWORTH?  
09:36AM 8 A. YES.  
09:36AM 9 Q. AND ON THIS DOCUMENT, DO YOU SEE A SECOND PSA MAY 18TH  
09:36AM 10 WITH A SCORE OF 1.7?  
09:36AM 11 A. YES.  
09:36AM 12 Q. WAS THAT THE SECOND SCORE FOR DR. ELLSWORTH'S PSA TEST?  
09:36AM 13 A. YES.  
09:36AM 14 Q. AND IF YOU'LL TURN TO PAGE 4 AT THE VERY TOP.  
09:37AM 15 DID DR. ELLSWORTH HAVE A THIRD PSA TEST AT THERANOS ON OR  
09:37AM 16 AROUND JUNE 11TH? DO YOU RECALL THAT?  
09:37AM 17 A. YES.  
09:37AM 18 Q. AND HERE THE SCORE IS LISTED AS A 22.8; IS THAT RIGHT?  
09:37AM 19 THE COURT: I'M SORRY. WHAT PAGE?  
09:37AM 20 THE WITNESS: YEAH, I'M TRYING TO FIND IT.  
09:37AM 21 MR. SCHENK: THE VERY TOP OF PAGE 4.  
09:37AM 22 Q. DR. BURNES, DO YOU SEE THAT? IT'S ALSO ON THE SCREEN.  
09:37AM 23 A. I SEE IT ON THE SCREEN. I JUST DON'T SEE IT ON THIS PAGE.  
09:37AM 24 JUST ABOVE "THANKS, DAN."  
09:37AM 25 OH, I'M SORRY. IT'S AT THE VERY, VERY TOP.

09:37AM 1 YES, I SEE IT, 22.8.

09:37AM 2 Q. AND WAS THAT THE THIRD PSA SCORE THAT DR. ELLSWORTH

09:37AM 3 RECEIVED FROM THERANOS?

09:37AM 4 A. YES.

09:37AM 5 Q. JUST A COUPLE MORE EMAILS TO GO THROUGH.

09:38AM 6 IF YOU TURN NOW TO PAGE 3 OF THIS DOCUMENT AT THE VERY

09:38AM 7 TOP.

09:38AM 8 ACTUALLY, LET'S CAPTURE THE FROM LINE, WHICH WOULD BE AT

09:38AM 9 THE VERY BOTTOM OF PAGE 2.

09:38AM 10 IF YOU'LL TURN TO PAGE 2 AT THE VERY, VERY BOTTOM, DO YOU

09:38AM 11 SEE THE BEGINNING OF AN EMAIL?

09:38AM 12 A. YES.

09:38AM 13 Q. AND THE FROM LINE READS SUNNY BALWANI; IS THAT CORRECT?

09:38AM 14 A. YES.

09:38AM 15 Q. AND NOW WE'LL TURN TO PAGE 3 TO CAPTURE THE CONTENT.

09:38AM 16 DO YOU SEE WHERE MR. BALWANI WRITES, "DANIEL. I DO NOT

09:38AM 17 BELIEVE SAMPLE MIX UP IS POSSIBLE BY A REMOTE SHOT IN OUR

09:38AM 18 SYSTEM BUT SINCE THE MOST RECENT VISIT IS ON JUNE 11TH AND

09:38AM 19 SHOULD HAVE THE SAMPLE IN OUR LABS, WE SHOULD BE ABLE TO CHECK

09:38AM 20 THE LABEL ON SAMPLE ACROSS THE ENTIRE SYSTEMS. WE SHOULD START

09:38AM 21 BY RERUNNING THE SAMPLE TO START AND THE WORK BACKWARDS FROM

09:39AM 22 THERE."

09:39AM 23 DO YOU SEE THAT?

09:39AM 24 A. YES.

09:39AM 25 Q. AND THEN THERE'S ANOTHER PARAGRAPH BELOW WHERE MR. BALWANI

09:39AM 1 GIVES FURTHER INSTRUCTIONS.

09:39AM 2 DO YOU SEE THAT ALSO?

09:39AM 3 BEGINNING "TINA."

09:39AM 4 A. YES.

09:39AM 5 Q. NOW WOULD YOU PLEASE TURN TO PAGE 2.

09:39AM 6 ON PAGE 2, THERE'S A RESPONSE FROM DANIEL YOUNG TO

09:39AM 7 SUNNY BALWANI AND OTHERS.

09:39AM 8 DO YOU SEE THAT?

09:39AM 9 A. YES.

09:39AM 10 Q. MR. -- DR. YOUNG WRITES, "THE MOST RECENT SAMPLE WAS

09:39AM 11 FLAGGED FOR HEMOLYSIS AND CLOTTING. THE SAMPLE WAS USED FOR

09:39AM 12 THE PSA RESULT.

09:39AM 13 "PSA FROM VISITS 1 AND 3 WERE RUN ON EDISON. VISIT 2 WAS

09:39AM 14 RUN IN PHOENIX."

09:39AM 15 DO YOU SEE THAT?

09:39AM 16 A. YES.

09:40AM 17 Q. AND FINALLY, "THIS IS LOOKING LIKE EITHER A SAMPLE

09:40AM 18 INTEGRITY ISSUE, OR SOME OTHER INTERFERANT IN THE PATIENT

09:40AM 19 SAMPLE AFFECTED THE PSA TEST ON EDISON."

09:40AM 20 DID I READ THAT CORRECTLY?

09:40AM 21 A. YES.

09:40AM 22 Q. AND IF WE JUST FINISH THIS AND IF YOU'LL TURN TO PAGE 1.

09:40AM 23 DO YOU SEE AT THE VERY BOTTOM WHERE MR. BALWANI WRITES,

09:40AM 24 "IF IT IS THEN WE SHOULD EXPLAIN THIS TO DOC."

09:40AM 25 DO YOU SEE THAT?

09:40AM 1 A. YES.

09:40AM 2 Q. AND, DR. BURNES, DO YOU HAVE A RECOLLECTION OF SOMEONE AT

09:40AM 3 THERANOS TELLING YOU THAT THERE WERE ISSUES WITH THE INTEGRITY

09:40AM 4 OF DR. ELLSWORTH'S SAMPLE?

09:40AM 5 A. I DON'T RECALL.

09:40AM 6 Q. AT THE VERY TOP THERE ARE TWO EMAILS, FIRST FROM

09:40AM 7 DAN FLOREY TO MR. BALWANI, AND THEN AN EMAIL FROM MR. BALWANI

09:40AM 8 TO ELIZABETH HOLMES.

09:40AM 9 DO YOU SEE THOSE TWO EMAILS?

09:41AM 10 A. I SEE THE FIRST ONE FROM DAN TO SUNNY.

09:41AM 11 WHERE IS THE SECOND ONE.

09:41AM 12 Q. LET'S TALK ABOUT THAT ONE, AND THEN I'LL MOVE UP TO THE

09:41AM 13 NEXT ONE.

09:41AM 14 A. OKAY.

09:41AM 15 Q. THE ONE FROM MR. FLOREY, DO YOU SEE THAT IT SUMMARIZES A

09:41AM 16 CONVERSATION WITH YOU, WITH SOMEONE NAMED DR. BURNES?

09:41AM 17 DO YOU SEE THAT WITHIN THIS EMAIL?

09:41AM 18 A. YES.

09:41AM 19 Q. THE CALL WAS POSITIVE AND IT SOUNDS LIKE YOU DESCRIBE THE

09:41AM 20 THERANOS PLAN AS SOLID.

09:41AM 21 DO YOU SEE THAT?

09:41AM 22 A. YES.

09:41AM 23 Q. AND ABOVE THIS EMAIL FROM DAN FLOREY, DO YOU SEE AN EMAIL

09:41AM 24 WITH NO CONTENT, JUST A FORWARD FROM MR. BALWANI TO MS. HOLMES?

09:41AM 25 A. YES.

09:41AM 1 Q. THANK YOU.

09:41AM 2 I'D LIKE TO NOW TURN YOU BACK TO THE EXHIBIT WITH THE TEST

09:41AM 3 RESULTS. THAT'S 4938. IF YOU'LL TURN TO PAGE 5.

09:42AM 4 DO YOU SEE ON PAGE 5 A LAB TEST RESULT FOR DR. ELLSWORTH

09:42AM 5 FROM A JUNE 11, 2015 VISIT DATE?

09:42AM 6 A. YES.

09:42AM 7 Q. AND, DR. BURNES, IS THIS THE THIRD THERANOS PSA TEST FOR

09:42AM 8 DR. ELLSWORTH?

09:42AM 9 A. YES.

09:42AM 10 Q. HERE THERE'S A SUMMARY OF ABNORMAL RESULTS AND A PSA,

09:42AM 11 TOTAL.

09:42AM 12 DO YOU SEE THOSE TWO BOXES?

09:42AM 13 A. YES.

09:42AM 14 Q. AND WHAT IS THE PSA SCORE THIS TIME FOR DR. ELLSWORTH?

09:42AM 15 A. 22.8.

09:42AM 16 Q. WHEN YOU RECEIVED THIS AS A THIRD SCORE -- A MOMENT AGO

09:42AM 17 YOU EXPLAINED TO THE JURY THE FIRST WAS QUITE HIGH AND THE

09:42AM 18 SECOND SCORE WAS AS EXPECTED.

09:42AM 19 YOU DIDN'T WANT TO LET DR. ELLSWORTH TRAVEL WITH THESE TWO

09:42AM 20 SCORES, SO YOU WANTED HIM TO HAVE A THIRD?

09:43AM 21 A. YES.

09:43AM 22 Q. A TIEBREAKER.

09:43AM 23 WHEN YOU RECEIVED THIS SCORE OF 22, THEN WHAT WERE YOU

09:43AM 24 THINKING? HOW DID YOU FEEL?

09:43AM 25 A. THERE WAS SOMETHING NOT CORRECT WITH THE LABS.

09:43AM 1 Q. AND WHY DID YOU THINK THAT THERE WAS NOT SOMETHING CORRECT  
09:43AM 2 WITH THE LABS AS OPPOSED TO A QUESTION ABOUT DR. ELLSWORTH'S  
09:43AM 3 HEALTH?  
09:43AM 4 A. THE FIRST IS THAT IT WAS FAR HIGHER THAN WOULD BE EXPECTED  
09:43AM 5 EVEN IF HE DEVELOPED CANCER OVER THE PREVIOUS TWO YEARS; THE  
09:43AM 6 SECOND WAS THE FACT THAT WE HAD A VALUE ON THE SECOND DRAW THAT  
09:43AM 7 WAS CONSISTENT WITH THE EXPECTED RESULT, AND THESE OTHER TWO  
09:43AM 8 WERE EXTRAORDINARILY MUCH HIGHER THAT WOULD BE EXPECTED.  
09:43AM 9 Q. AT THE VERY BOTTOM OF THIS DOCUMENT, DO YOU SEE A SECTION  
09:43AM 10 UNDER THE TITLE "PERFORMING SITE"?  
09:43AM 11 A. YES.  
09:43AM 12 Q. AND IS THE PERFORMING SITE AN ADDRESS IN NEWARK,  
09:43AM 13 CALIFORNIA?  
09:43AM 14 A. YES.  
09:44AM 15 Q. AND THERE'S ALSO THAT SAME STAMP WITH SOME HANDWRITING; IS  
09:44AM 16 THAT RIGHT?  
09:44AM 17 A. YES.  
09:44AM 18 Q. IT LOOKS LIKE "SPOKE WITH PATIENT ON JUNE 15TH" IS  
09:44AM 19 WRITTEN.  
09:44AM 20 IS THAT CORRECT?  
09:44AM 21 A. YES.  
09:44AM 22 Q. AFTER YOU RECEIVED THIS THIRD PSA SCORE FOR DR. ELLSWORTH,  
09:44AM 23 WHAT WAS YOUR PLAN? WHAT DID YOU WANT TO DO NEXT?  
09:44AM 24 A. WELL, I BECAME VERY DISTRUSTFUL THAT I COULD RELY ON THIS  
09:44AM 25 TEST FOR DR. ELLSWORTH BEFORE HE LEFT FOR TWO YEARS.

09:44AM 1 Q. SO WHAT DID YOU DO?

09:44AM 2 A. I ASKED THAT THEY COULD PERFORM THE TEST BY THEIR  
09:44AM 3 TRADITIONAL METHOD AT THEIR COSTS, HOWEVER IT'S USUALLY DONE,  
09:44AM 4 NOT THE NEW THERANOS WAY, AND I BELIEVE THEY SAID THEY WOULD DO  
09:44AM 5 THAT.

09:44AM 6 Q. AND I'M SORRY. YOU SAID THAT YOU WANTED -- YOU MADE A  
09:44AM 7 SPECIAL OR A SPECIFIC REQUEST?

09:44AM 8 A. YES. BECAUSE HE HAD ALREADY PAID FOR TWO TESTS, THE FIRST  
09:44AM 9 TWO, TO MAKE THIS RIGHT FOR THE PATIENT, I ASKED THAT THEY, AT  
09:44AM 10 THEIR EXPENSE, THIS IS FURTHER THEIR ISSUE, THAT THEY WOULD  
09:45AM 11 JUST ARRANGE TO HAVE IT DONE BY THE TRADITIONAL METHOD.

09:45AM 12 Q. I SEE. AS OPPOSED TO HOW YOU UNDERSTOOD THE THERANOS DRAW  
09:45AM 13 TO BE?

09:45AM 14 A. YES.

09:45AM 15 Q. IF YOU'LL NOW TURN TO PAGE 4 OF THIS EXHIBIT.

09:45AM 16 DR. BURNES, IS THIS NOW A FOURTH THERANOS PSA TEST FOR  
09:45AM 17 YOUR PATIENT, DR. ELLSWORTH?

09:45AM 18 A. YES.

09:45AM 19 Q. AND WAS THIS VISIT DATE JUNE 30TH, 2015?

09:45AM 20 DO YOU SEE THAT?

09:45AM 21 A. YES.

09:45AM 22 Q. AND THIS TIME, WHAT IS THE PSA SCORE?

09:45AM 23 A. 0.95.

09:45AM 24 Q. AND UNDER "KEY" TOWARD THE BOTTOM OF THE DOCUMENT, DO YOU  
09:45AM 25 SEE A DESCRIPTION OF WHERE THE TEST WAS PROCESSED?

09:45AM 1 A. YES.

09:45AM 2 Q. AND IS THIS ONE NOW BEING PROCESSED IN SCOTTSDALE,

09:45AM 3 ARIZONA?

09:45AM 4 A. YES.

09:45AM 5 Q. AT A THERANOS LABORATORY?

09:45AM 6 A. YES.

09:45AM 7 Q. NOW THAT YOU HAVE THIS FOURTH PSA TEST FROM DR. ELLSWORTH

09:46AM 8 ON WHAT YOU DESCRIBED AS A TRADITIONAL METHOD, HOW DID YOU THEN

09:46AM 9 FEEL ABOUT GIVING SOME MEDICAL ADVICE TO DR. ELLSWORTH BEFORE

09:46AM 10 HE TOOK HIS TRIP?

09:46AM 11 A. I FELT COMFORTABLE AND IT WOULD BE OKAY FOR HIM TO

09:46AM 12 LEAVE --

09:46AM 13 Q. WHY?

09:46AM 14 A. -- FOR TWO YEARS.

09:46AM 15 Q. I'M SORRY. WHY?

09:46AM 16 A. I FELT REASSURED THAT THAT WAS THE EXPECTED VALUE, AND I

09:46AM 17 FELT COMFORTABLE ENOUGH THAT I COULD LET HIM GO WITHOUT FURTHER

09:46AM 18 TESTING.

09:46AM 19 Q. I WOULD LIKE TO SHOW YOU JUST A COUPLE MORE PAGES. IF

09:46AM 20 YOU'LL TURN NOW TO PAGE 3 IN THIS EXHIBIT.

09:46AM 21 DO YOU SEE ON PAGE 3 A DOCUMENT THAT WAS FAXED TO YOUR

09:46AM 22 OFFICE IN MARCH OF 2016?

09:46AM 23 A. I SEE THE DATE AT THE TOP, MARCH 29TH, 2016.

09:46AM 24 Q. THANK YOU.

09:46AM 25 AND WAS THIS NOW THE FOLLOWING YEAR AFTER DR. ELLSWORTH'S

09:47AM 1 FOUR TESTS IN 2015?

09:47AM 2 A. YES, THIS IS ABOUT NINE MONTHS LATER.

09:47AM 3 Q. UNDER REPORT STATUS FINAL, DO YOU SEE WHERE THIS SAYS THIS

09:47AM 4 REPORT CONTAINS CORRECTED RESULTS AT THE VERY TOP ACROSS FROM

09:47AM 5 THE THERANOS LOGO?

09:47AM 6 A. YES, I SEE THAT.

09:47AM 7 Q. AND DID THERANOS PROVIDE TO YOUR OFFICE SOME CORRECTED

09:47AM 8 RESULTS REGARDING DR. ELLSWORTH'S 2015 TESTS?

09:47AM 9 A. YES.

09:47AM 10 Q. AND IN THIS ONE UNDER VISIT DATE, DO YOU SEE THAT IT'S

09:47AM 11 MAY 14TH, 2015?

09:47AM 12 A. YES.

09:47AM 13 Q. WAS THAT DR. ELLSWORTH'S VERY FIRST PSA TEST AT THERANOS?

09:47AM 14 A. YES.

09:47AM 15 Q. UNDER THE PSA, TOTAL BOX, DO YOU SEE ACROSS FROM PROSTATE

09:47AM 16 SPECIFIC ANTIGEN, TOTAL, IT READS VOID -- 26.1?

09:47AM 17 A. YES.

09:47AM 18 Q. AND THEN THERE'S A "C" IN BRACKETS.

09:48AM 19 DO YOU SEE THAT?

09:48AM 20 A. YES.

09:48AM 21 Q. AND UNDER THE KEY TOWARDS THE BOTTOM, DOES "C" STAND FOR

09:48AM 22 CORRECTED?

09:48AM 23 A. YES.

09:48AM 24 Q. WHEN YOU RECEIVED THIS IN MARCH OF 2016, WHAT DID YOU DO

09:48AM 25 WITH IT?

09:48AM 1 A. I SIMPLY FILED IT AWAY.

09:48AM 2 Q. I'M SORRY?

09:48AM 3 A. I SIMPLY FILED IT IN THE CHART.

09:48AM 4 Q. OKAY. LET'S TURN NOW TO PAGE 2 OF THE EXHIBIT.

09:48AM 5 DO YOU SEE ANOTHER CORRECTED LAB RESULT FOR DR. ELLSWORTH

09:48AM 6 ALSO SENT IN MARCH OF 2016?

09:48AM 7 A. WHAT PAGE ARE WE SUPPOSED TO BE ON?

09:48AM 8 Q. PAGE 2.

09:48AM 9 A. OKAY.

09:48AM 10 Q. IS THIS ANOTHER CORRECTED REPORT FROM THERANOS FOR

09:49AM 11 DR. ELLSWORTH THAT YOU RECEIVED IN MARCH OF 2016?

09:49AM 12 A. YES.

09:49AM 13 Q. DOES THIS ONE CORRECT THE JUNE 11TH, 2015 LAB RESULT?

09:49AM 14 A. YES.

09:49AM 15 Q. WAS THAT THE 22.8 PSA SCORE FOR DR. ELLSWORTH?

09:49AM 16 A. YES.

09:49AM 17 Q. AND, AGAIN, DO YOU SEE THAT THE 22.8 IS A CORRECTED VALUE

09:49AM 18 ACCORDING TO THE KEY?

09:49AM 19 A. YES.

09:49AM 20 Q. AND DID YOU DO -- SORT OF TAKE A SIMILAR ACTION WITH THIS

09:49AM 21 DOCUMENT, THAT IS, FILE IT AWAY IN THE CHART?

09:49AM 22 A. YES.

09:49AM 23 Q. AND DID YOU HAVE A CONVERSATION WITH DR. ELLSWORTH AFTER

09:49AM 24 YOU RECEIVED THESE TWO VOIDED OR CORRECTED RESULTS?

09:49AM 25 A. HE WAS OUT OF THE COUNTRY.

09:49AM 1 Q. IF YOU'LL --  
09:49AM 2 A. NO.  
09:49AM 3 Q. I'M SORRY?  
09:49AM 4 A. NO, I DID NOT.  
09:49AM 5 Q. IF YOU'LL NOW TURN TO PAGE 8 OF THIS EXHIBIT.  
09:50AM 6 DO YOU SEE THE DOCUMENT LOCATED ON PAGE 8 OF THIS EXHIBIT?  
09:50AM 7 A. YES.  
09:50AM 8 Q. WHAT IS THIS DOCUMENT?  
09:50AM 9 A. THIS IS A LABORATORY RESULT.  
09:50AM 10 Q. FOR WHICH PATIENT?  
09:50AM 11 A. DR. ELLSWORTH.  
09:50AM 12 Q. AND ON THE RIGHT SIDE AT THE TOP, DO YOU SEE THE  
09:50AM 13 COLLECTION DATE?  
09:50AM 14 A. YES, FEBRUARY 28TH, 2017.  
09:50AM 15 Q. SO THIS IS NOW A COUPLE OF YEARS AFTER THE FOUR THERANOS  
09:50AM 16 TESTS WE HAVE BEEN DISCUSSING?  
09:50AM 17 A. YES.  
09:50AM 18 Q. AND NOW WHAT IS DR. ELLSWORTH'S PSA SCORE?  
09:50AM 19 A. 2.0.  
09:50AM 20 Q. THANK YOU.  
09:50AM 21 IF WE CAN JUST BRING UP ONE LAST TIME PAGE 7, THE VERY  
09:50AM 22 FIRST THERANOS TEST RESULT.  
09:50AM 23 DR. BURNES, DO YOU RECALL THIS ONE? THIS IS THE ORIGINAL  
09:50AM 24 26.1 FROM THERANOS.  
09:50AM 25 A. YES.

09:50AM 1 Q. DO YOU HAVE AN OPINION ON WHETHER THIS TEST WAS ACCURATE  
09:50AM 2 OR WAS NOT ACCURATE?  
09:50AM 3 A. WHICH TEST ARE WE TALKING ABOUT?  
09:51AM 4 Q. THE ONE THAT IS ON THE SCREEN IN FRONT OF YOU, THE 26.1,  
09:51AM 5 THE VERY FIRST THERANOS TEST.  
09:51AM 6 A. THIS TEST, I BELIEVE, WAS IN ERROR.  
09:51AM 7 Q. AND WHY DO YOU SAY THAT?  
09:51AM 8 A. IT WAS SO FAR OUT OF RANGE FOR ANY CAUSE SHORT OF TRAUMA  
09:51AM 9 THAT IT DIDN'T MAKE ANY SENSE.  
09:51AM 10 Q. AND YOU SAID "FOR ANY CAUSE SHORT OF TRAUMA." WERE YOU  
09:51AM 11 ALSO ABLE TO RULE OUT TRAUMA?  
09:51AM 12 A. TRAUMA IS USUALLY WHEN A PATIENT CANNOT URINATE AND THEY  
09:51AM 13 SHOW UP IN AN EMERGENCY ROOM AND THEY TRY TO PASS A CATHETER  
09:51AM 14 AND IT TRAUMATIZES THEM -- THEY PUT IN A URINE CATHETER, AND IN  
09:51AM 15 THE COURSE OF TRYING TO PASS A CATHETER INTO THE BLADDER,  
09:51AM 16 SOMETIMES IT WILL STRIKE THE PROSTATE AND CAUSE TRAUMA AND  
09:52AM 17 DAMAGE.  
09:52AM 18 Q. AND THAT IS A POTENTIAL CAUSE OF A VERY HIGH PSA SCORE?  
09:52AM 19 A. YES. I HAD ONE THAT WAS, LIKE, VALUED AT 60 FROM TRAUMA  
09:52AM 20 FROM A CATHETER.  
09:52AM 21 Q. WERE YOU ABLE TO RULE OUT THAT POTENTIAL BIOLOGICAL  
09:52AM 22 EXPLANATION IN DR. ELLSWORTH'S CASE?  
09:52AM 23 A. YES.  
09:52AM 24 Q. AND BY RULING THAT OUT, DOES THAT GIVE YOU ADDITIONAL  
09:52AM 25 CONFIDENCE REGARDING YOUR CONCLUSION THAT THIS FIRST TEST

09:52AM 1 RESULT WAS NOT ACCURATE?

09:52AM 2 A. YES.

09:52AM 3 MR. SCHENK: YOUR HONOR, MAY I HAVE ONE MOMENT?

09:52AM 4 THE COURT: YES. DISCUSSION.

09:52AM 5 (DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

09:52AM 6 MR. SCHENK: THANK YOU, DR. BURNES.

09:52AM 7 NO FURTHER QUESTIONS.

09:52AM 8 THE COURT: CROSS-EXAMINATION?

09:53AM 9 **CROSS-EXAMINATION**

09:53AM 10 BY MR. COOPERSMITH:

09:53AM 11 Q. GOOD MORNING, DR. BURNES.

09:53AM 12 A. HELLO.

09:53AM 13 Q. MY NAME IS JEFF COOPERSMITH, AND I REPRESENT MR. BALWANI.

09:53AM 14 I'M GOING TO ASK YOU SOME QUESTIONS ABOUT YOUR EXPERIENCE

09:53AM 15 WITH THERANOS. OKAY?

09:53AM 16 SO AS YOU -- I THINK YOU SAID ON DIRECT THAT YOUR PRACTICE

09:53AM 17 IS IN INTERNAL MEDICINE IN THE PHOENIX AREA?

09:53AM 18 A. YES.

09:53AM 19 Q. AND FOR PATIENT MEHRL ELLSWORTH, I THINK YOU SAID HE HAD

09:53AM 20 TO PAY OUT OF POCKET FOR THESE TESTS?

09:53AM 21 A. YES.

09:53AM 22 Q. BECAUSE THEY WERE NOT IN THE NORMAL CYCLE OF PHYSICAL

09:53AM 23 CHECKUPS; IS THAT RIGHT?

09:53AM 24 A. YES.

09:53AM 25 Q. SO BECAUSE OF THAT, DID YOU FIND IT ADVANTAGEOUS FOR YOUR

09:53AM 1 PATIENT THAT THERANOS OFFERED LOW PRICES?

09:54AM 2 A. YES.

09:54AM 3 Q. AND YOU KNEW THAT BECAUSE SOMEONE AT THERANOS HAD TOLD YOU

09:54AM 4 ABOUT THEIR PRICES?

09:54AM 5 A. YES, AND THERE WAS A SHEET THAT WAS PROVIDED THAT SHOWED

09:54AM 6 THE PRICES.

09:54AM 7 Q. OKAY. AND WERE THOSE SHEETS AVAILABLE PUBLICLY AS FAR AS

09:54AM 8 YOU KNOW FOR THERANOS?

09:54AM 9 A. I PRESUME SO.

09:54AM 10 Q. OKAY. AND FOR MOST LABS THAT YOU HAVE EXPERIENCE WITH,

09:54AM 11 SUCH AS LABCORP, ARE THEY PUBLISHING THEIR PRICES ON THEIR

09:54AM 12 WEBSITE OR BEING TRANSPARENT ABOUT THAT?

09:54AM 13 A. NO.

09:54AM 14 Q. OKAY. SO LET'S TALK ABOUT THE LAB RESULTS FOR

09:54AM 15 DR. ELLSWORTH.

09:54AM 16 AND I CALL HIM DR. ELLSWORTH BECAUSE DR. ELLSWORTH IS

09:54AM 17 ACTUALLY A DENTIST; IS THAT RIGHT?

09:54AM 18 A. YES.

09:54AM 19 Q. AND HE WAS A LONG-TIME PATIENT OF YOURS?

09:54AM 20 A. YES.

09:54AM 21 Q. AND THE PSA TEST THAT YOU HAD ORDERED FOR DR. ELLSWORTH,

09:54AM 22 THAT WAS NOT THE FIRST TIME THAT YOU USED THERANOS FOR ONE OF

09:54AM 23 YOUR PATIENTS; CORRECT?

09:55AM 24 A. CORRECT.

09:55AM 25 Q. AND, IN FACT, PRIOR TO DR. ELLSWORTH, YOU HAD BEEN USING

09:55AM 1 THERANOS FOR SOME PATIENTS FOR ABOUT A YEAR PRIOR TO  
09:55AM 2 DR. ELLSWORTH'S TESTS?  
09:55AM 3 A. YES, THAT'S PROBABLY TRUE.  
09:55AM 4 Q. AND FOR THOSE OTHER PATIENTS THAT YOU SENT TO THERANOS,  
09:55AM 5 THERE WERE NO OTHER ISSUES; CORRECT?  
09:55AM 6 A. NO, NONE THAT I COULD FIND.  
09:55AM 7 Q. AND YOU FOUND THE OTHER RESULTS FROM THERANOS, BEFORE THE  
09:55AM 8 ELLSWORTH RESULT THAT WE'LL TALK ABOUT IN A MINUTE, TO BE  
09:55AM 9 ACCURATE AND RELIABLE AS FAR AS YOU COULD TELL?  
09:55AM 10 A. I COULDN'T FIND ANY TESTS THAT WERE CONCERNING.  
09:55AM 11 Q. NO TESTS THAT WERE CONCERNING. OKAY.  
09:55AM 12 WELL, LET'S TALK ABOUT DR. ELLSWORTH.  
09:55AM 13 SO THE GOVERNMENT SHOWED YOU EXHIBIT 4938, WHICH IS A  
09:55AM 14 COLLECTION OF LAB RESULTS.  
09:55AM 15 DO YOU HAVE THAT IN FRONT OF YOU?  
09:55AM 16 A. YES.  
09:55AM 17 Q. OKAY. THANK YOU.  
09:55AM 18 SO LET'S START WITH THE EARLIEST RESULT IN TIME, AND THAT  
09:55AM 19 IS ON PAGE 7 OF THE EXHIBIT.  
09:55AM 20 DO YOU SEE THAT?  
09:55AM 21 A. YES.  
09:55AM 22 Q. AND THAT'S THE VISIT DATE FROM MAY 14TH, 2015?  
09:55AM 23 A. YES.  
09:55AM 24 Q. OKAY. AND IF YOU LOOK AT THE TOP, JUST TO START OUT WITH,  
09:55AM 25 YOU SEE THAT THERE'S A DATE ON THE FAX LINE OF MAY 16TH, 2015?

09:56AM 1 A. YES.

09:56AM 2 Q. AND THAT IS THE DATE THAT YOU RECEIVED THE REPORT FOR THIS

09:56AM 3 PARTICULAR TEST FOR DR. ELLSWORTH; CORRECT?

09:56AM 4 A. YES.

09:56AM 5 Q. AND THEN THERE'S THERANOS FAX SERVER NEXT TO THAT.

09:56AM 6 IF YOU GO TO THE VERY RIGHT, DO YOU SEE THAT THERE'S AN

09:56AM 7 ADDRESS OF THE LAB?

09:56AM 8 A. YES.

09:56AM 9 Q. OKAY. AND ON DIRECT EXAMINATION MR. SCHENK HAD SHOWED YOU

09:56AM 10 SOME NOTATIONS AND SOME OTHER RESULTS THAT INDICATED WHERE THE

09:56AM 11 TEST WAS PERFORMED.

09:56AM 12 DO YOU REMEMBER THAT?

09:56AM 13 A. YES.

09:56AM 14 Q. OKAY. AND ON THIS PAGE WE DON'T SEE THAT PARTICULAR

09:56AM 15 NOTATION; CORRECT?

09:56AM 16 A. NO, NOT THAT I RECOGNIZE.

09:56AM 17 Q. OKAY. AND THEN DO YOU SEE THE ADDRESS OF THE LAB IS ON

09:56AM 18 THE RIGHT WHERE IT IS HIGHLIGHTED ON THE SCREEN, THAT'S IN

09:56AM 19 SCOTTSDALE, ARIZONA?

09:56AM 20 A. YES.

09:56AM 21 Q. AND THERE'S A FAX NUMBER WHICH IS A 650 NUMBER?

09:57AM 22 A. YES.

09:57AM 23 Q. OKAY. DO YOU KNOW, DR. ELLSWORTH, WHERE THIS FAX WAS

09:57AM 24 TRANSMITTED FROM?

09:57AM 25 A. I'M DR. BURNES.

09:57AM 1 Q. I'M SORRY, WHAT DID I CALL YOU?

09:57AM 2 DR. BURNES, OF COURSE. MY MISTAKE.

09:57AM 3 DID YOU -- DO YOU KNOW WHERE THIS FAX WAS TRANSMITTED FROM

09:57AM 4 TO YOUR OFFICE?

09:57AM 5 A. NO.

09:57AM 6 Q. OKAY. ALL RIGHT.

09:57AM 7 LOOKING AT THE RESULT THOUGH, THIS IS THE 26.1 RESULT?

09:57AM 8 A. YES.

09:57AM 9 Q. OKAY. AND WHEN YOU SAW THAT, IT DIDN'T TAKE YOU LONG TO

09:57AM 10 CONCLUDE THAT THERE WAS SOME KIND OF ERROR MOST LIKELY; IS THAT

09:57AM 11 RIGHT?

09:57AM 12 A. I COULDN'T TRUST IT.

09:57AM 13 Q. RIGHT. BECAUSE THAT WAS A LEVEL MUCH HIGHER THAN WHAT YOU

09:57AM 14 WOULD EXPECT FOR A PATIENT LIKE DR. ELLSWORTH?

09:57AM 15 A. YES.

09:57AM 16 Q. OKAY. AND AS A RESULT, YOU HAD ANOTHER TEST DONE; RIGHT?

09:57AM 17 A. YES.

09:57AM 18 Q. SO JUST PAUSING ON THAT FOR A MINUTE, IN YOUR CAREER, YOU

09:58AM 19 HAVE SEEN ON OCCASION THAT LABORATORIES CAN MAKE ERRORS; RIGHT?

09:58AM 20 A. YES.

09:58AM 21 Q. AND, IN FACT, YOU HAD AN EXPERIENCE EARLIER THAN THE

09:58AM 22 DR. ELLSWORTH SITUATION WITH LABCORP MAKING AN ERROR; CORRECT?

09:58AM 23 A. YES.

09:58AM 24 Q. AND WHEN LABCORP MADE AN ERROR, YOU KNOW, YOU DIDN'T TRUST

09:58AM 25 THAT PARTICULAR RESULT EITHER; RIGHT?

09:58AM 1 A. NO.

09:58AM 2 Q. AND I THINK THE ERROR THAT YOU REMEMBER FROM LABCORP

09:58AM 3 WAS -- HAD TO DO WITH AN ASSAY CALLED CREATINE?

09:58AM 4 A. YES.

09:58AM 5 Q. AND WHAT IS CREATINE?

09:58AM 6 A. CREATINE IS A WASTE PRODUCT FROM MUSCLE, LIKE PSA IS FROM

09:58AM 7 THE PROSTATE, AND CREATINE IS FROM MUSCLE, AND IT'S CLEARED

09:58AM 8 FROM THE BODY AS A WASTE PRODUCT THROUGH THE KIDNEY.

09:58AM 9 SO IT'S A VERY SIMPLE WAY ON THE LAB TEST TO DETERMINE

09:58AM 10 ROUGH KIDNEY FUNCTION.

09:58AM 11 Q. OKAY. AND WHEN THAT ERROR OCCURRED WITH LABCORP, DID YOU

09:58AM 12 MAKE A CONCLUSION THAT LABCORP WAS INCAPABLE OF PRODUCING

09:58AM 13 ACCURATE TESTS FOR YOUR PATIENTS?

09:59AM 14 A. NO, BUT IT NEEDED TO BE LOOKED INTO.

09:59AM 15 Q. OKAY. AND DO YOU KNOW -- OTHER THAN THAT ERROR THAT YOU

09:59AM 16 PERSONALLY EXPERIENCED WITH LABCORP WITH THE PATIENT, DO YOU

09:59AM 17 KNOW HOW MANY OTHER ERRORS THAT LABCORP MAKES OVER TIME WITH

09:59AM 18 OTHER PATIENTS?

09:59AM 19 A. THEY'RE RARE. SOMETIMES IT MIGHT BE IMPOSSIBLE TO CATCH

09:59AM 20 THEM. BUT THEY ARE VERY RARE.

09:59AM 21 Q. OKAY. BUT LABS DO MAKE ERRORS?

09:59AM 22 A. YES.

09:59AM 23 Q. AND THAT COULD BE CAUSED FROM A VARIETY OF REASONS; RIGHT?

09:59AM 24 A. YES.

09:59AM 25 Q. AND, FOR EXAMPLE, LIKE AN ERROR IN THE SAMPLE COLLECTION

09:59AM 1 COULD BE A REASON?

09:59AM 2 A. YES.

09:59AM 3 Q. AND AN ISSUE WITH THE SAMPLE INTEGRITY COULD BE A REASON?

09:59AM 4 A. YES.

09:59AM 5 Q. AND AN ISSUE WITH THE WAY THE LABORATORY USES REAGENTS

09:59AM 6 COULD BE A REASON?

09:59AM 7 A. YES.

09:59AM 8 Q. OR A MISTAKE USING EXPIRED REAGENTS COULD BE A REASON?

09:59AM 9 A. YES.

09:59AM 10 Q. AND MANY OTHER REASONS THAT WE COULD THINK OF IF WE ALL

09:59AM 11 HAD THE TIME; RIGHT?

09:59AM 12 A. YES.

09:59AM 13 Q. SO LET'S GO BACK TO THE EXHIBIT, WHICH IS EXHIBIT 4938.

10:00AM 14 AND DO YOU SEE ON PAGE 6 THERE'S A NOTATION ERROR IN YOUR

10:00AM 15 HANDWRITING FOR MAY 19TH, 2015? I THINK YOU READ THAT DURING

10:00AM 16 YOUR DIRECT EXAMINATION.

10:00AM 17 DO YOU REMEMBER THAT?

10:00AM 18 A. YES.

10:00AM 19 Q. AND SO YOU HAD A CONVERSATION WITH THE LAB; IS THAT

10:00AM 20 CORRECT?

10:00AM 21 A. YES.

10:00AM 22 Q. OKAY. AND I THINK YOU FOUND -- YOU SAID YOU FOUND THEM

10:00AM 23 PLEASANT TO TALK TO?

10:00AM 24 A. YES.

10:00AM 25 Q. AND THEY WEREN'T AGGRESSIVE OR COMBATIVE OR ANYTHING LIKE

10:00AM 1 THAT?

10:00AM 2 A. NO.

10:00AM 3 Q. OKAY. AND IF YOU GO TO EXHIBIT 4415, WHICH IS THE OTHER

10:00AM 4 EXHIBIT THAT YOU LOOKED AT ON DIRECT.

10:00AM 5 A. WHICH PAGE?

10:00AM 6 Q. I'M SORRY. IT'S ON PAGE 8 IS WHAT I'M GOING TO TALK

10:01AM 7 ABOUT.

10:01AM 8 AND DO YOU HAVE THAT PAGE, DR. BURNES?

10:01AM 9 A. YES.

10:01AM 10 Q. OKAY. AND YOU SEE THAT THERE'S AN EMAIL FROM

10:01AM 11 AMELIA AGUIRRE AT THE BOTTOM?

10:01AM 12 A. OH.

10:01AM 13 Q. YES. THANK YOU.

10:01AM 14 AND DO YOU SEE THAT MS. AGUIRRE REPORTS THAT YOU HAD

10:01AM 15 CALLED TO TALK ABOUT THE PSA RESULTS; RIGHT?

10:01AM 16 A. YES.

10:01AM 17 Q. AND THAT IS THAT MAY 9TH CALL THAT WE SAW THAT YOU HAD

10:01AM 18 NOTATED ON THE LAB RESULT?

10:01AM 19 A. YES.

10:01AM 20 Q. AND THIS IS THE PERSON THAT YOU FOUND TO BE PLEASANT WHEN

10:01AM 21 YOU CALLED THAT FIRST TIME; RIGHTS?

10:01AM 22 A. YES.

10:01AM 23 Q. OKAY. AND WHAT -- WHEN YOU TALKED TO MS. AGUIRRE, I THINK

10:01AM 24 YOU SAID ON DIRECT THAT YOU THOUGHT IT WOULD BE WISE TO GET THE

10:01AM 25 THIRD TEST FOR DR. ELLSWORTH?

10:01AM 1 A. YES.

10:01AM 2 Q. IS THAT RIGHT?

10:01AM 3 AND THEN YOU DID THAT; RIGHT?

10:01AM 4 A. YES.

10:01AM 5 Q. IF YOU GO BACK TO THE OTHER EXHIBIT, 4938, AND THEN

10:02AM 6 PAGE 3. I'M SORRY. PAGE 5.

10:02AM 7 AND THIS IS THE THIRD RESULT; IS THAT CORRECT?

10:02AM 8 A. YES.

10:02AM 9 Q. AND THEN YOU HAD ANOTHER CONVERSATION WITH A THERANOS

10:02AM 10 REPRESENTATIVE AFTER THAT TEST; IS THAT RIGHT?

10:02AM 11 A. YES.

10:02AM 12 Q. AND IF YOU GO BACK TO EXHIBIT 4415, THIS TIME YOU SPOKE TO

10:02AM 13 THE LAB DIRECTOR? THIS TIME YOU SPOKE TO THE LAB DIRECTOR?

10:02AM 14 A. YES.

10:02AM 15 Q. AND THAT WAS DR. DANIEL YOUNG?

10:03AM 16 A. I BELIEVE SO. I ASKED FOR THE NATIONAL LAB DIRECTOR.

10:03AM 17 Q. OKAY. AND YOU WERE CONNECTED WITH DR. YOUNG?

10:03AM 18 A. I BELIEVE SO. I DON'T REMEMBER THE NAME ITSELF.

10:03AM 19 Q. SO WE'LL CALL HIM THE LAB DIRECTOR IN THAT CASE.

10:03AM 20 SO THE LAB DIRECTOR THAT YOU TALKED TO, YOU UNDERSTAND

10:03AM 21 THAT WAS HIS POSITION?

10:03AM 22 A. YES.

10:03AM 23 Q. AND THE LAB DIRECTOR WAS ALSO PLEASANT AND RESPONSIVE TO

10:03AM 24 YOUR CONCERNs?

10:03AM 25 A. YES.

10:03AM 1 Q. AND I THINK YOU SAID ON DIRECT THAT YOU DON'T RECALL  
10:03AM 2 WHETHER HE EXPLAINED IT WAS, IN HIS VIEW, A SAMPLE INTEGRITY  
10:03AM 3 ISSUE?  
10:03AM 4 A. I DON'T RECALL THAT.  
10:03AM 5 Q. OKAY. YOU DON'T RECALL IT EITHER WAY?  
10:03AM 6 A. YES, I DON'T RECALL EXACTLY. I DON'T REALLY TRULY RECALL,  
10:03AM 7 BUT I WOULDN'T ASSUME THAT THAT WAS A PATIENT MIXUP.  
10:03AM 8 Q. OKAY. AND PUTTING ASIDE THE PATIENT MIXUP -- WELL, LET'S  
10:03AM 9 TALK ABOUT THAT FOR A MINUTE. SO ONE POSSIBLE ERROR A LAB  
10:03AM 10 COULD MAKE IS THAT THEY COULD SWITCH THE SAMPLE AND YOU'RE  
10:03AM 11 GETTING RESULTS FOR THE WRONG PATIENT; RIGHT?  
10:03AM 12 A. YES.  
10:03AM 13 Q. AND YOU DIDN'T THINK THAT HAPPENED HERE?  
10:03AM 14 A. I DIDN'T BELIEVE SO.  
10:04AM 15 Q. OKAY.  
10:04AM 16 A. BUT IT'S POSSIBLE.  
10:04AM 17 Q. AND WHEN YOU TALKED TO THE LAB DIRECTOR AFTER THAT THIRD  
10:04AM 18 TEST, THAT LAB DIRECTOR DIDN'T TELL YOU THAT THE EXPLANATION  
10:04AM 19 WAS SAMPLE MIXUP; RIGHT?  
10:04AM 20 A. NO.  
10:04AM 21 Q. OKAY. AND YOU DON'T REMEMBER WHETHER THE EXPLANATION HAD  
10:04AM 22 TO DO WITH THE SAMPLE INTEGRITY OF DR. ELLSWORTH'S SAMPLE?  
10:04AM 23 A. COULD YOU REPHRASE THAT QUESTION?  
10:04AM 24 Q. SURE. DO YOU REMEMBER ONE WAY OR THE OTHER WHETHER THE  
10:04AM 25 LAB DIRECTOR TOLD YOU THAT HE THOUGHT THE PROBLEM HERE WAS A

10:04AM 1 SAMPLE INTEGRITY ISSUE?

10:04AM 2 A. I BELIEVE I WOULD ACCEPT THAT BECAUSE I DIDN'T THINK -- IT

10:04AM 3 WOULD BE VERY, VERY UNLIKELY TO HAVE LABS SWITCHED TWICE.

10:04AM 4 Q. AND THAT ISSUE OF SAMPLE INTEGRITY, THAT WOULD BE A

10:04AM 5 PLAUSIBLE EXPLANATION FOR WHY THESE RESULTS SEEMED OFF?

10:04AM 6 A. IT COULD BE.

10:04AM 7 Q. OKAY. AND IF WE JUST STAY WITH EXHIBIT 4415 FOR A MINUTE

10:05AM 8 AND YOU GO TO PAGE 2.

10:05AM 9 THERE'S AN EMAIL FROM DANIEL YOUNG TO MR. BALWANI AND

10:05AM 10 TINA LIN AND OTHERS.

10:05AM 11 AND THAT FIRST LINE SAYS, "THE MOST RECENT SAMPLE (EDTA

10:05AM 12 PCTN) WAS FLAGGED FOR HEMOLYSIS AND CLOTTING. THIS SAMPLE WAS

10:05AM 13 USED FOR THE PSA RESULT."

10:05AM 14 DO YOU SEE THAT?

10:05AM 15 A. YES.

10:05AM 16 Q. AND SO THIS WAS THE INTERNAL EXPLANATION THAT DR. YOUNG

10:05AM 17 WAS GIVING; IS THAT RIGHT?

10:05AM 18 A. I PRESUME SO. I WASN'T MADE AWARE OF THAT AT THAT TIME.

10:05AM 19 Q. RIGHT. BUT YOU UNDERSTAND THAT THIS IS AN INTERNAL EMAIL

10:05AM 20 THAT YOU'RE NOT COPIED ON; RIGHT?

10:05AM 21 A. YES.

10:05AM 22 Q. AND THAT WOULD BE A MISTAKE THAT THE LAB MADE, TO BE

10:05AM 23 CLEAR, IF THEY HAD NOTICED HEMOLYSIS AND CLOTTING, BUT USED THE

10:06AM 24 SAMPLE FOR PATIENT TESTING ANYWAY; RIGHT?

10:06AM 25 MR. SCHENK: OBJECTION. FOUNDATION.

10:06AM 1 THE COURT: DO YOU WANT TO LAY A FOUNDATION AS TO  
10:06AM 2 HIS KNOWLEDGE, IF HE RECALLS?  
10:06AM 3 MR. COOPERSMITH: SURE.  
10:06AM 4 Q. DR. BURNES, LET ME JUST ASK YOU AS CLEAR AS I CAN, IF A  
10:06AM 5 LAB NOTICES THAT THERE IS HEMOLYSIS AND CLOTTING IN A SAMPLE,  
10:06AM 6 DO YOU AGREE THAT THEY SHOULD NOT THEN GO FORWARD AND USE THAT  
10:06AM 7 FOR THE LAB TEST?  
10:06AM 8 A. I'M AN EXPERT IN INTERPRETING RESULTS, BUT TO BE HONEST,  
10:06AM 9 IT'S BEEN 30 YEARS SINCE I WAS IN RESIDENCY AND THE MECHANICS  
10:06AM 10 OF HOW THINGS ARE DONE I DON'T RECALL EXACTLY.  
10:06AM 11 Q. OKAY. BUT DOES THAT SOUND CORRECT TO YOU?  
10:06AM 12 A. YES.  
10:06AM 13 Q. OKAY.  
10:06AM 14 MR. SCHENK: OBJECTION. MOVE TO STRIKE.  
10:06AM 15 THE COURT: SUSTAINED. LACK OF FOUNDATION.  
10:06AM 16 THAT LAST RESPONSE, THE ANSWER IS STRICKEN, LADIES AND  
10:06AM 17 GENTLEMEN.  
10:06AM 18 YOU CAN ASK ANOTHER QUESTION.  
10:06AM 19 MR. COOPERSMITH: OKAY. THANKS, YOUR HONOR.  
10:06AM 20 Q. SO LET'S GO TO PAGE 3 OF THE EXHIBIT.  
10:07AM 21 ACTUALLY, WE CAN START ON THE VERY, VERY BOTTOM OF PAGE 2,  
10:07AM 22 JUST SO WE SEE, AGAIN, THE EMAIL.  
10:07AM 23 THIS IS AN EMAIL FROM MR. BALWANI.  
10:07AM 24 DO YOU SEE THAT?  
10:07AM 25 A. YES.

10:07AM 1 Q. OKAY. AND THEN GOING TO THE NEXT PAGE, JUST TO SEE THE  
10:07AM 2 CONTENT.

10:07AM 3 SO MR. BALWANI'S FIRST REACTION WAS, "TINA. CAN YOU  
10:07AM 4 INVESTIGATE THIS?"

10:07AM 5 DO YOU SEE THAT?

10:07AM 6 A. YES.

10:07AM 7 Q. AND THEN THE NEXT LINE SAYS, "DANIEL. I DO NOT BELIEVE  
10:07AM 8 SAMPLE MIXUP IS POSSIBLE BY A REMOTE SHOT IN OUR SYSTEM BUT  
10:07AM 9 SINCE THE MOST RECENT VISIT IS ON 6/11 AND SHOULD HAVE THE  
10:07AM 10 SAMPLE IN OUR LABS, WE SHOULD BE ABLE TO CHECK THE LABEL ON  
10:07AM 11 SAMPLE ACROSS THE ENTIRE SYSTEMS."

10:07AM 12 AND THEN IT GOES ON. "WE SHOULD START BY RERUNNING THE  
10:07AM 13 SAMPLE TO START AND THE WORK BACKWARDS FROM THERE."

10:07AM 14 DO YOU SEE THAT?

10:07AM 15 A. YES.

10:07AM 16 Q. OKAY. SO READING THIS ON THE PAGE, AND I UNDERSTAND YOU  
10:07AM 17 WEREN'T PART OF THIS EMAIL, BUT IT APPEARS TO YOU THAT  
10:08AM 18 MR. BALWANI WAS JUST TRYING TO MAKE HIS LAB STAFF GET TO THE  
10:08AM 19 BOTTOM OF THIS; RIGHT?

10:08AM 20 MR. SCHENK: OBJECTION. CALLS FOR SPECULATION.

10:08AM 21 THE COURT: SUSTAINED.

10:08AM 22 BY MR. COOPERSMITH:

10:08AM 23 Q. WITHOUT ASKING THE QUESTION, YOU SEE THE WORDS ON THE  
10:08AM 24 PAGES I JUST READ; RIGHT?

10:08AM 25 A. YES.

10:08AM 1 Q. OKAY. AND WOULD YOU EXPECT A LAB LIKE THERANOS TO HAVE A  
10:08AM 2 SYSTEM WHERE YOU COULD ACTUALLY DO THE THINGS THAT MR. BALWANI  
10:08AM 3 WAS ASKING TO BE CHECKED?

10:08AM 4 MR. SCHENK: OBJECTION. SPECULATION. FOUNDATION.

10:08AM 5 MR. COOPERSMITH: I'M ASKING FOR HIS PERSONAL  
10:08AM 6 KNOWLEDGE WHAT HE WOULD EXPECT IN HIS EXPERIENCE.

10:08AM 7 THE COURT: WELL, HE TOLD US EARLIER THAT IT'S BEEN  
10:08AM 8 30 YEARS SINCE HE'S BEEN INVOLVED IN THIS. I THINK THERE'S A  
10:08AM 9 LACK OF FOUNDATION, UNLESS YOU CAN LAY ONE.

10:08AM 10 MR. COOPERSMITH: OKAY. I WILL DO THAT, YOUR HONOR.

10:08AM 11 Q. DR. BURNES, EVEN THOUGH YOU DON'T WORK IN THE LABORATORY  
10:08AM 12 INDUSTRY, YOU'RE A MEDICAL DOCTOR, YOU HAVE SOME KNOWLEDGE,  
10:08AM 13 EVEN IF IT'S OLD, ABOUT HOW LABORATORIES ARE SUPPOSED TO  
10:08AM 14 OPERATE; IS THAT FAIR?

10:08AM 15 A. YES.

10:08AM 16 Q. OKAY. AND ONE THING THAT I WOULD -- IS IT FAIR TO SAY  
10:08AM 17 THAT YOU WOULD EXPECT A LABORATORY TO KEEP RECORDS OF THE  
10:09AM 18 PATIENT TESTING THAT THEY HAVE GOING ON?

10:09AM 19 MR. SCHENK: OBJECTION. FOUNDATION. IT CALLS FOR  
10:09AM 20 SPECULATION, AND RELEVANCE FROM THIS WITNESS.

10:09AM 21 THE COURT: I'LL SUSTAIN THE 104 OBJECTION.

10:09AM 22 MR. COOPERSMITH: OKAY.

10:09AM 23 Q. WELL, LET ME JUST ASK YOUR PERSONAL KNOWLEDGE, DR. BURNES.  
10:09AM 24 OVER YOUR CAREER ORDERING LAB TESTS, HAVE YOU HAD OCCASION  
10:09AM 25 TO, EVEN ON MANY OCCASIONS, TO TALK TO PEOPLE WHO WORK AT

10:09AM 1 CLINICAL LABORATORIES?

10:09AM 2 A. NOT OFTEN, TO BE HONEST.

10:09AM 3 Q. OKAY. BUT WHEN YOU DO, YOU INTERACT WITH LAB STAFF; IS

10:09AM 4 THAT FAIR?

10:09AM 5 A. ONLY MY MEDICAL ASSISTANT.

10:09AM 6 Q. IN OTHER WORDS -- LET ME ASK A CLEARER QUESTION. YOU KNOW

10:09AM 7 HOW YOU HAD THOSE CALLS WITH THERANOS PERSONNEL THAT WE JUST

10:09AM 8 DISCUSSED?

10:09AM 9 A. YES.

10:09AM 10 Q. AND AT OTHER TIMES, EVEN WITH OTHER LABS, YOU'VE HAD, OVER

10:09AM 11 TIME, EVEN IF IT'S NOT THAT OFTEN, YOU'VE HAD QUESTIONS OR

10:10AM 12 COMMENTS, YOU HAVE HAD CONVERSATIONS WITH OTHER PEOPLE WHO WORK

10:10AM 13 AT DIFFERENT LABORATORIES?

10:10AM 14 A. TO BE HONEST, VERY INFREQUENTLY, AND MOSTLY BECAUSE THEY

10:10AM 15 WEREN'T AS EASY TO ANSWER THE PHONE AS THERANOS WAS.

10:10AM 16 Q. OKAY.

10:10AM 17 A. IT'S VERY DIFFICULT TO GET AHOLOD OF SOMEBODY AT, LIKE,

10:10AM 18 LABCORP.

10:10AM 19 Q. I SEE. IN THE THERANOS CASE IT WAS EASY TO GET AHOLOD OF

10:10AM 20 SOMEONE?

10:10AM 21 A. YES, IT WAS. THAT'S WHY I REMEMBER IT SO WELL.

10:10AM 22 Q. UNDERSTOOD. THANK YOU.

10:10AM 23 AND THEN IF WE CONTINUE ON PAGE 3 AT 4415, YOU SEE THAT

10:10AM 24 LAST PARAGRAPH OF THE EMAIL THAT WE WERE READING SAYS, "TINA.

10:10AM 25 CAN YOU PLEASE OWN THIS AND UPDATE ME IN REALTIME.

10:10AM 1 "MAX. CAN U FREE UP YOUR TIME AND START TRACKING THIS  
10:10AM 2 SAMPLE AND AA AND MAKE SURE EVERYTHING CHECKS OUT THERE. HAVE  
10:10AM 3 SOMEONE PHYSICALLY LOOK AT LABELS TO MAKE SURE LABELS MATCH  
10:10AM 4 WITH WHAT WAS DRAWN AT PSC AND THE ONE PRINTED IN LAB IF  
10:11AM 5 PRINTED IN LAB."  
10:11AM 6 DO YOU SEE THAT?  
10:11AM 7 A. YES.  
10:11AM 8 Q. AND DO YOU UNDERSTAND THAT THAT WAS MR. BALWANI GIVING  
10:11AM 9 THAT DIRECTION; CORRECT?  
10:11AM 10 A. YES.  
10:11AM 11 Q. IF YOU GO TO PAGE 6, THERE'S AN EMAIL FROM MAY 19TH.  
10:11AM 12 DO YOU SEE THAT?  
10:11AM 13 A. YES.  
10:11AM 14 Q. FROM CATHERINE HUNKLER.  
10:11AM 15 DO YOU SEE THAT?  
10:11AM 16 A. YES.  
10:11AM 17 Q. AND THEN THE CONTENT THERE SAYS, "THE TUBE BARCODED," AND  
10:11AM 18 THEN IT HAS A BAR CODE NUMBER, "HAD A BIG CLOT IN IT -- MIGHT  
10:11AM 19 THIS HAVE AFFECTED RESULTS IF NOT CAUGHT AT THE INITIAL RUN?"  
10:11AM 20 DO YOU SEE THAT?  
10:11AM 21 A. YES.  
10:11AM 22 Q. AND SO YOU UNDERSTAND THAT THIS IS AN INTERNAL EMAIL FROM  
10:11AM 23 THERANOS DISCUSSING THE ISSUE OF A CLOT IN THE COLLECTION TUBE.  
10:11AM 24 IS THAT FAIR?  
10:11AM 25 A. YES.

10:11AM 1 Q. OKAY.

10:12AM 2 MAY I HAVE A MOMENT, YOUR HONOR?

10:12AM 3 THE COURT: YES.

10:12AM 4 (DISCUSSION AMONGST DEFENSE COUNSEL OFF THE RECORD.)

10:12AM 5 MR. COOPERSMITH: NO FURTHER QUESTIONS, YOUR HONOR.

10:12AM 6 THE COURT: REDIRECT?

10:13AM 7 **REDIRECT EXAMINATION**

10:13AM 8 BY MR. SCHENK:

10:13AM 9 Q. GOOD MORNING AGAIN, DOCTOR.

10:13AM 10 MR. COOPERSMITH ASKED YOU SOME QUESTIONS REGARDING YOUR

10:13AM 11 EXPERIENCE WITH LABCORP AND THE CREATINE ASSAY.

10:13AM 12 DO YOU RECALL THAT DISCUSSION?

10:13AM 13 A. YES.

10:13AM 14 Q. AND I THINK YOU SAID YOU HAD AN EXPERIENCE WHERE THERE

10:13AM 15 WERE RESULTS THAT YOU QUESTIONED THAT CAME FROM LABCORP; IS

10:13AM 16 THAT RIGHT?

10:13AM 17 A. IT WAS MULTIPLE LABS.

10:13AM 18 Q. I'M SORRY. IT WAS MULTIPLE LABS?

10:13AM 19 A. IT WAS ABOUT FOUR IN ONE WEEK.

10:13AM 20 Q. NOT JUST LABCORP, OTHER --

10:13AM 21 A. IT WAS JUST LABCORP.

10:13AM 22 Q. I SEE. MULTIPLE LAB RESULTS FROM LABCORP ALL INVOLVING

10:13AM 23 CREATINE; IS THAT CORRECT?

10:13AM 24 A. YES.

10:13AM 25 Q. IN THIS INSTANCE WHEN YOU HAD THERANOS RERUN THE SAMPLE,

10:13AM 1 THE FIRST ONE WE'VE TALKED ABOUT WAS IN THE 20'S AND WAS HIGH;

10:13AM 2 CORRECT?

10:13AM 3 A. YES.

10:13AM 4 Q. AND THE SECOND ONE WAS WHAT YOU WOULD HAVE EXPECTED, WAS

10:13AM 5 WITHIN THE REFERENCE RANGE; IS THAT RIGHT?

10:13AM 6 A. YES.

10:13AM 7 Q. AND THEN THERANOS, AT YOUR REQUEST, RERAN IT A THIRD TIME.

10:14AM 8 DO YOU RECALL WHAT THAT SCORE WAS, THE THIRD ONE?

10:14AM 9 A. I BELIEVE THAT WAS ABOUT A 22.

10:14AM 10 Q. AND WHAT CONCLUSIONS DID YOU DRAW ABOUT THAT?

10:14AM 11 A. THE ODDS WERE THAT THERE WAS SOMETHING WRONG WITH THE LAB

10:14AM 12 TEST.

10:14AM 13 Q. SO WHEN YOU POINTED OUT TO THEM THAT THE FIRST SCORE WAS

10:14AM 14 SOMETHING THAT YOU HAD QUESTIONS ABOUT AND YOU DID THIS

10:14AM 15 TIEBREAKER BEFORE SENDING DR. ELLSWORTH ON HIS TRIP, THE THIRD

10:14AM 16 SCORE THAT CAME BACK SIMILARLY CAUSED YOU TO HAVE SOME CONCERN

10:14AM 17 ABOUT WHETHER THAT THIRD SCORE WAS ACCURATE OR NOT; IS THAT

10:14AM 18 RIGHT?

10:14AM 19 A. YES.

10:14AM 20 Q. EVEN AFTER YOU BROUGHT TO THEIR ATTENTION THAT THERE MIGHT

10:14AM 21 BE PROBLEMS?

10:14AM 22 A. YES.

10:14AM 23 Q. THANK YOU.

10:14AM 24 NO FURTHER QUESTIONS.

10:14AM 25 MR. COOPERSMITH: NOTHING FURTHER, YOUR HONOR.

10:14AM 1 THE COURT: MAY THIS WITNESS BE EXCUSED?

10:14AM 2 MR. COOPERSMITH: YES, YOUR HONOR.

10:14AM 3 MR. SCHENK: YES.

10:14AM 4 THE COURT: THANK YOU, SIR. YOU'RE EXCUSED. THANK

10:14AM 5 YOU.

10:15AM 6 DOES THE GOVERNMENT HAVE ANOTHER WITNESS TO CALL?

10:15AM 7 MR. SCHENK: THE UNITED STATES CALLS

10:15AM 8 DR. MEHRL ELLSWORTH.

10:15AM 9 THE COURT: THANK YOU.

10:15AM 10 FOLKS, YOU CAN STAND UP AND STRETCH IF YOU WOULD LIKE

10:15AM 11 WHILE DR. ELLSWORTH COMES IN.

10:15AM 12 (STRETCHING.)

10:15AM 13 THE COURT: GOOD MORNING, SIR.

10:15AM 14 IF YOU COULD STAND OVER HERE AND RAISE YOUR RIGHT HAND

10:15AM 15 WHILE YOU FACE OUR COURTROOM DEPUTY, SHE HAS A QUESTION FOR

10:15AM 16 YOU.

10:15AM 17 THE WITNESS: OKAY.

10:15AM 18 (**GOVERNMENT'S WITNESS, MEHRL ELLSWORTH, WAS SWORN.**)

10:15AM 19 THE WITNESS: YES.

10:15AM 20 THE CLERK: THANK YOU.

10:16AM 21 THE COURT: WE INVITE YOU TO HAVE A SEAT HERE, SIR,

10:16AM 22 AND MAKE YOURSELF COMFORTABLE.

10:16AM 23 FEEL FREE TO ADJUST THE CHAIR AND THE MICROPHONE AS YOU

10:16AM 24 NEED.

10:16AM 25 AND WHEN YOU ARE COMFORTABLE, WOULD YOU PLEASE STATE YOUR

10:16AM 1 NAME AND THEN SPELL IT, PLEASE.

10:16AM 2 THE WITNESS: MEHRL K. ELLSWORTH, DR. ELLSWORTH.

10:16AM 3 M-E-H-R-L, ELLSWORTH, E-L-L-S-W-O-R-T-H.

10:16AM 4 THE COURT: THANK YOU.

10:16AM 5 MR. SCHENK.

10:16AM 6 MR. SCHENK: THANK YOU, YOUR HONOR.

10:16AM 7 **DIRECT EXAMINATION**

10:16AM 8 BY MR. SCHENK:

10:16AM 9 Q. DR. ELLSWORTH, IF YOU'RE FULLY VACCINATED, I UNDERSTAND,

10:16AM 10 WITH THE COURT'S PERMISSION, YOU CAN TESTIFY WITHOUT A MASK ON.

10:16AM 11 A. THANK YOU. I WILL DO THAT.

10:16AM 12 Q. THANK YOU.

10:16AM 13 DR. ELLSWORTH, I WANT TO DRAW YOUR ATTENTION TO THE MAY OR

10:16AM 14 JUNE 2015 TIMEFRAME.

10:16AM 15 DO YOU HAVE THAT TIMEFRAME IN MIND?

10:16AM 16 A. 2018?

10:16AM 17 Q. 2015.

10:16AM 18 A. '15? YES, I DO.

10:16AM 19 Q. WERE YOU EMPLOYED AT THAT TIME?

10:17AM 20 A. YES. I WAS A PRACTICING DENTIST IN ARIZONA.

10:17AM 21 Q. AND WHERE IN ARIZONA?

10:17AM 22 A. MY OFFICE IS IN LITCHFIELD PARK.

10:17AM 23 Q. AND DID YOU ALSO RESIDE IN ARIZONA AT THAT TIME?

10:17AM 24 A. YES. I LIVED THREE BLOCKS FROM MY OFFICE.

10:17AM 25 Q. AT THAT TIME, AGAIN, THE MAY, JUNE 2015 TIMEFRAME, WERE

10:17AM 1 YOU PLANNING TO TAKE A LENGTHY INTERNATIONAL TRIP?

10:17AM 2 A. YES. I HAD BEEN REQUESTED TO BE THE HUMANITARIAN DIRECTOR

10:17AM 3 IN THAILAND, MIRAMAR AND LAOS BY THE CHURCH OF JESUS CHRIST.

10:17AM 4 ANYWAY, MORMON CHURCH, OKAY.

10:17AM 5 Q. THANK YOU.

10:17AM 6 DID YOU HAVE A PHYSICIAN, A PERSONAL PHYSICIAN IN ARIZONA

10:17AM 7 AT THE TIME?

10:17AM 8 A. YES.

10:17AM 9 Q. AND WHO IS THAT?

10:17AM 10 A. DR. BURNES.

10:17AM 11 Q. BEFORE YOU TOOK THIS TRIP, DID YOU HAVE SOME LAB WORK

10:17AM 12 DONE?

10:17AM 13 A. YES. I HAD AN ANNUAL PHYSICAL DONE, AND WE HAD MOVED, AT

10:18AM 14 THE REQUEST OF MY CHURCH PEOPLE, THAT I WOULD BE CLEARED FOR

10:18AM 15 MEDICAL SERVICE IN ANOTHER COUNTRY.

10:18AM 16 Q. I SEE. SOME LAB WORK BEFORE YOU TOOK THIS TRIP?

10:18AM 17 A. YES.

10:18AM 18 Q. AMONG THE BLOOD TESTS, DID YOU GET ORDERS TO TAKE A PSA

10:18AM 19 TEST?

10:18AM 20 A. YES.

10:18AM 21 MR. SCHENK: YOUR HONOR, MAY I APPROACH AGAIN?

10:18AM 22 THE COURT: YES.

10:18AM 23 MR. SCHENK: (HANDING.)

10:18AM 24 Q. DR. ELLSWORTH, I'VE HANDED YOU A BINDER OF DOCUMENTS THAT

10:18AM 25 I'M GOING TO ASK YOU TO LOOK AT IN PARTICULAR IN A MOMENT.

10:18AM 1 BUT WHEN YOU WERE GETTING THIS LAB WORK DONE, DID YOU  
10:18AM 2 SPEAK WITH DR. BURNES ABOUT WHERE YOU SHOULD GO TO HAVE YOUR  
10:18AM 3 LAB WORK DONE?  
10:18AM 4 A. YES.  
10:18AM 5 Q. AND WHAT DID YOU DISCUSS?  
10:18AM 6 A. HE RECOMMENDED, SINCE IT WAS -- WE COMPLETED THE MAJOR  
10:18AM 7 BATTERY, BUT THE PSA HAD BEEN EXCLUDED, THAT IT WOULD BE A  
10:19AM 8 SIMPLE MATTER TO JUST RUN OVER TO WALGREENS AND THERANOS WAS  
10:19AM 9 AVAILABLE THERE ON -- ON AN INEXPENSIVE AND QUICK BASIS.  
10:19AM 10 Q. DID YOU EVENTUALLY GO TO THERANOS FOR YOUR BLOOD TESTS?  
10:19AM 11 A. YES.  
10:19AM 12 Q. AND DID YOU EXPECT THAT THE BLOOD TEST RESULTS THAT YOU  
10:19AM 13 RECEIVED FROM THERANOS WOULD BE ACCURATE?  
10:19AM 14 A. YES.  
10:19AM 15 Q. WHY DID YOU EXPECT THAT?  
10:19AM 16 A. THEY WERE INTEGRATED INTO THE WALGREENS STRUCTURE, SO  
10:19AM 17 BETWEEN BEING A REPUTABLE FIRM AND DR. BURNES'S RECOMMENDATION,  
10:19AM 18 ACCURACY WOULD BE EXPECTED.  
10:19AM 19 Q. ACCURACY OF THE BLOOD TESTS, AS YOU SAY, WOULD JUST BE  
10:19AM 20 EXPECTED?  
10:19AM 21 A. YES.  
10:19AM 22 Q. I'D LIKE TO NOW HAVE YOU TURN TO PAGE 7 OF TAB 4938.  
10:19AM 23 YOUR HONOR, PERMISSION TO PUBLISH?  
10:20AM 24 THE COURT: YES.  
10:20AM 25 THE WITNESS: PAGE 7?

10:20AM 1 BY MR. SCHENK:

10:20AM 2 Q. YES, SIR. ACTUALLY, AT THE BOTTOM OF THE DOCUMENT THERE'S

10:20AM 3 A TRIAL EXHIBIT NUMBER AND A PAGE NUMBER, SORT OF.

10:20AM 4 DO YOU SEE THAT?

10:20AM 5 A. I'LL JUST COUNT THE PAGES.

10:20AM 6 I'M ON THE LAST PAGE; IS THAT CORRECT?

10:20AM 7 Q. ONE PAGE BEFORE THE LAST PAGE.

10:20AM 8 A. OKAY. THERANOS.

10:20AM 9 OKAY. I SEE IT.

10:20AM 10 Q. AND IT'S ALSO ON THE SCREEN IN FRONT OF YOU IF THAT ENDS

10:20AM 11 UP BEING --

10:20AM 12 A. YEAH, YEAH, THAT'S GOOD.

10:20AM 13 Q. DOCTOR, IS THIS THE FIRST -- DID YOU GET MULTIPLE BLOOD

10:20AM 14 TESTS AT THERANOS?

10:20AM 15 A. YES.

10:20AM 16 Q. AND DO YOU SEE ON THIS DOCUMENT THERE'S A VISIT DATE OF

10:20AM 17 MAY 14TH, 2015?

10:20AM 18 DO YOU SEE THAT?

10:20AM 19 A. YES.

10:20AM 20 Q. WAS THIS THE VERY FIRST --

10:20AM 21 A. CORRECT.

10:20AM 22 Q. -- PSA BLOOD TEST AT THERANOS?

10:21AM 23 A. YES.

10:21AM 24 Q. AND DO YOU SEE THE SCORE HERE WAS A 26?

10:21AM 25 A. YES.

10:21AM 1 Q. BEFORE THIS TEST, HAD YOU RECEIVED PRIOR PSA TEST SCORES  
10:21AM 2 JUST IN YOUR -- IN THE HISTORY OF YOUR MEDICAL EXPERIENCE?  
10:21AM 3 A. YES. I HAD HAD ANNUAL PHYSICALS DONE BY DR. BURNES FOR AT  
10:21AM 4 LEAST FOUR YEARS PREVIOUSLY, AND SO WE HAD A PROFILE OF WHAT WE  
10:21AM 5 WOULD EXPECT TO BE A PSA READING.  
10:21AM 6 Q. AND HOW DID THIS 26 COMPARE WITH YOUR PREVIOUS SCORES?  
10:21AM 7 A. I HAD ALWAYS BEEN AROUND 2 IN THE PAST, SO THIS WAS, I  
10:21AM 8 GUESS YOU WOULD CALL, A TEN-FOLD INCREASE.  
10:21AM 9 Q. I'D LIKE TO ASK YOU SOME QUESTIONS ABOUT THE TEST  
10:21AM 10 EXPERIENCE.  
10:21AM 11 DO YOU RECALL WHERE YOU WENT TO GET THE BLOOD DRAW?  
10:21AM 12 A. I WENT TO THE WALGREENS RETAIL PHARMACY IN TECHNICALLY  
10:22AM 13 GOODYEAR, BUT ABOUT A HALF A MILE FROM DR. BURNES'S OFFICE AND  
10:22AM 14 ABOUT A HALF A MILE FROM MY OFFICE.  
10:22AM 15 Q. AND THAT'S GENERALLY IN THE PHOENIX, ARIZONA AREA?  
10:22AM 16 A. GENERALLY. ON THE WEST SIDE WHEN YOU CONSIDER PHOENIX,  
10:22AM 17 YES.  
10:22AM 18 Q. WHAT PART OF YOUR BODY WAS THE BLOOD DRAWN FROM? DO YOU  
10:22AM 19 REMEMBER?  
10:22AM 20 A. IT WAS DONE AS A FINGERSTICK.  
10:22AM 21 Q. HOW ABOUT THE PAYMENT? DO YOU REMEMBER IF YOU PAID OUT OF  
10:22AM 22 POCKET OR IF INSURANCE PAID?  
10:22AM 23 DO YOU HAVE A RECOLLECTION?  
10:22AM 24 A. I JUST PRESENTED MY PERSONAL CREDIT CARD AND PAID FOR IT  
10:22AM 25 IN ALL CASES THAT WAY.

10:22AM 1 Q. WHAT DO YOU MEAN "IN ALL CASES"?

10:22AM 2 A. FOR THE SUBSEQUENT TESTING, TESTS, TOO.

10:22AM 3 Q. I SEE. SO IN ADDITION TO THIS THERANOS TEST, YOU

10:22AM 4 PERSONALLY PAID FOR OTHER THERANOS TESTS?

10:22AM 5 A. YES.

10:22AM 6 Q. AFTER YOU RECEIVED THIS HIGH SCORE, THE 26, WHAT DID YOU

10:23AM 7 DO NEXT?

10:23AM 8 A. ONCE THE NUMBER CAME IN, THEN THERE WAS A DISCUSSION WITH

10:23AM 9 DR. BURNES. HE QUESTIONED THE RESULTS BEING OUT OF CHARACTER,

10:23AM 10 AND I THINK IT WAS, WHAT, THREE OR FOUR DAYS LATER, WE SAID

10:23AM 11 LET'S DO IT AGAIN AND SEE IF WE CAN GET A CONSISTENT RESULT.

10:23AM 12 Q. AND NOW IF YOU'LL TURN ONE PAGE PRIOR IN THIS EXHIBIT,

10:23AM 13 PAGE 6.

10:23AM 14 DO YOU SEE A LAB RESULT FOLLOWING A VISIT NOW ON MAY 18TH

10:23AM 15 OF 2015?

10:23AM 16 A. CORRECT.

10:23AM 17 Q. WAS THIS THE SECOND THERANOS PSA TEST THAT YOU RECEIVED?

10:23AM 18 A. YES.

10:23AM 19 Q. AND DID YOU GO TO THE SAME WALGREENS?

10:23AM 20 A. YES.

10:23AM 21 Q. AND DID YOU ALSO RECEIVE THIS VIA FINGERSTICK?

10:23AM 22 A. YES.

10:23AM 23 Q. AND I THINK YOU TESTIFIED ALREADY, DID YOU PERSONALLY USE

10:23AM 24 YOUR OWN FUNDS, YOUR PERSONAL FUNDS TO PAY FOR THIS?

10:23AM 25 A. YES.

10:23AM 1 Q. THANK YOU.

10:23AM 2 THE SCORE HERE IS A 1.71.

10:24AM 3 DO YOU SEE THAT?

10:24AM 4 A. YES.

10:24AM 5 Q. WAS THAT SCORE MORE CONSISTENT WITH THE RESULTS THAT YOU

10:24AM 6 HISTORICALLY HAD SEEN?

10:24AM 7 A. YES, BECAUSE I ALWAYS STAYED UNDER 2.

10:24AM 8 Q. DID YOU END UP GETTING A THIRD TEST?

10:24AM 9 A. YES.

10:24AM 10 Q. I'M SORRY. WHY?

10:24AM 11 A. YES.

10:24AM 12 Q. AND WHY? THE FIRST WAS OVER 20, AND THEN YOU HAVE THE

10:24AM 13 1.7. WHY DID YOU GET A THIRD TEST?

10:24AM 14 A. DR. BURNES'S SUGGESTION WAS, WELL, SINCE YOU'RE GOING

10:24AM 15 INTERNATIONAL, LET'S DO TWO OUT OF THREE AND SEE WHAT WE CAN

10:24AM 16 COME UP WITH.

10:24AM 17 Q. IF YOU'LL NOW TURN ONE PAGE PRIOR IN THE EXHIBIT, WE'RE

10:24AM 18 NOW ON TO PAGE 5.

10:24AM 19 IS THIS A TEST RESULT FOR YOUR PSA TEST ON

10:24AM 20 JUNE 11TH, 2015?

10:24AM 21 A. YES.

10:24AM 22 Q. NOW, IS THIS THE THIRD TEST THAT YOU --

10:24AM 23 A. YES.

10:24AM 24 Q. THANK YOU.

10:24AM 25 THIS TIME IT LOOKS LIKE THE SCORE WAS A 22.8.

10:24AM 1 DO YOU SEE THAT?

10:24AM 2 A. YES.

10:24AM 3 Q. AND SO THIS IS HIGH LIKE THE FIRST ONE; IS THAT RIGHT?

10:24AM 4 A. CORRECT.

10:24AM 5 Q. AND WAS THIS ALSO AT THE SAME WALGREENS?

10:25AM 6 A. YES.

10:25AM 7 Q. VIA FINGERSTICK?

10:25AM 8 A. YES.

10:25AM 9 Q. AND YOU PERSONALLY PAID WITH YOUR OWN FUNDS?

10:25AM 10 A. YES.

10:25AM 11 Q. SO NOW THAT YOU HAVE ONE HIGH SCORE, ONE LOWER OR EXPECTED

10:25AM 12 SCORE, AND NOW A THIRD HIGHER SCORE, WHAT DID YOU DO NEXT?

10:25AM 13 A. THERE WAS, YOU MIGHT SAY, A LONGER DISCUSSION WITH

10:25AM 14 DR. BURNES. HE SAID THAT WE CAN'T REALLY ACCEPT THIS RESULT

10:25AM 15 BASED ON YOUR PREVIOUS HISTORY, AND I THINK IT'S FAULTY. I'M

10:25AM 16 GOING TO TALK TO THE THERANOS REGIONAL PEOPLE.

10:25AM 17 I DON'T KNOW THE EXACT ONES THAT HE SPOKE WITH, BUT I KNOW

10:25AM 18 THAT THERE WAS A DISCUSSION WITH THERANOS THAT -- WE WERE

10:25AM 19 TRYING TO BE HELPFUL TO THEM.

10:25AM 20 THERE WASN'T ANY GREAT CONCERN ON MY PART. I HAD NO

10:25AM 21 SYMPTOMS.

10:25AM 22 AND DR. BURNES FACILITATED THEN AN ADDITIONAL TEST BEING

10:26AM 23 DONE.

10:26AM 24 Q. AND WAS THIS FOURTH ONE DIFFERENT IN LOCATION AND THE FORM

10:26AM 25 OF THE BLOOD DRAW THAN THE PRIOR THREE?

10:26AM 1 A. YES. SO THERANOS HAD HIRED A PHLEBOTOMIST TO COME  
10:26AM 2 DIRECTLY TO MY OFFICE, SO I LAID DOWN IN MY DENTAL CHAIR, PUT  
10:26AM 3 MY ARM OUT, AND HAD A VENOUS BLOOD DRAW.  
10:26AM 4 Q. IF YOU'LL NOW TURN TO ONE PAGE PRIOR, THAT'S PAGE 4 OF THE  
10:26AM 5 EXHIBIT, IT LOOKS LIKE THE DATE IS JUNE 30TH, 2015.  
10:26AM 6 DO YOU SEE THAT?  
10:26AM 7 A. YES.  
10:26AM 8 Q. AND THIS TIME THE SCORE IS A 0.95; IS THAT RIGHT?  
10:26AM 9 A. YES.  
10:26AM 10 Q. YOU SAID THIS ONE, THE FORM OF A BLOOD DRAW WAS DIFFERENT.  
10:26AM 11 THIS ONE WAS TAKEN FROM YOUR VEIN?  
10:26AM 12 A. YES.  
10:26AM 13 Q. THE FIRST THREE WERE ALL FINGERSTICK; IS THAT RIGHT?  
10:26AM 14 A. YES.  
10:26AM 15 Q. DID YOU PAY FOR THIS FOURTH ONE?  
10:26AM 16 A. NO. THAT WAS -- THERE WAS NO PAYMENT REQUESTED, OR I  
10:26AM 17 GUESS REALLY OFFERED. IT WAS JUST THE PERSON CAME TO MY  
10:26AM 18 OFFICE. THERE WAS SOME KIND OF APPOINTMENT MADE WITH MY STAFF,  
10:27AM 19 AND SHE WAS IN AND OUT IN PROBABLY 15 MINUTES, OR 10.  
10:27AM 20 Q. AND AFTER YOU RECEIVED THIS FOURTH THERANOS BLOOD TEST,  
10:27AM 21 DID YOU THEN, IN FACT, TAKE THE TRIP THAT WE HAVE BEEN  
10:27AM 22 DISCUSSING?  
10:27AM 23 A. YES.  
10:27AM 24 Q. THANK YOU.  
10:27AM 25 YOUR HONOR, MAY I HAVE ONE MOMENT?

10:27AM 1 THE COURT: YES.

10:27AM 2 (DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

10:27AM 3 MR. SCHENK: THANK YOU VERY MUCH, DOCTOR.

10:27AM 4 NO FURTHER QUESTIONS.

10:27AM 5 THE WITNESS: THANK YOU.

10:27AM 6 THE COURT: CROSS-EXAMINATION?

10:27AM 7 MR. COOPERSMITH: WE HAVE NO QUESTIONS FOR

10:27AM 8 DR. ELLSWORTH.

10:27AM 9 THE COURT: THANK YOU.

10:27AM 10 MAY THIS WITNESS BE EXCUSED?

10:27AM 11 MR. COOPERSMITH: YES, YOUR HONOR.

10:27AM 12 MR. SCHENK: NO, YOUR HONOR.

10:27AM 13 THE COURT: YOU'RE EXCUSED. THANK YOU, SIR.

10:28AM 14 DOES THE GOVERNMENT HAVE ANOTHER WITNESS TO CALL?

10:28AM 15 MR. BOSTIC: YES, YOUR HONOR.

10:28AM 16 THE UNITED STATES CALLED BRENT BINGHAM.

10:28AM 17 THE COURT: GOOD MORNING, SIR. IF YOU COULD JUST

10:28AM 18 COME FORWARD HERE AND RAISE YOUR RIGHT HAND AND FACE OUR

10:28AM 19 COURTROOM DEPUTY, SHE HAS A QUESTION FOR YOU.

10:28AM 20 (**GOVERNMENT'S WITNESS, BRENT BINGHAM, WAS SWORN.**)

10:28AM 21 THE WITNESS: I DO.

10:28AM 22 THE COURT: PLEASE HAVE A SEAT UP HERE, SIR. I'LL

10:29AM 23 INVITE YOU TO MAKE YOURSELF COMFORTABLE.

10:29AM 24 THE WITNESS: THANK YOU.

10:29AM 25 THE COURT: YOU'RE WELCOME.

10:29AM 1 FEEL FREE TO ADJUST THE CHAIR AND THE MICROPHONE AS YOU  
10:29AM 2 NEED.  
10:29AM 3 WHEN YOU ARE COMFORTABLE, WOULD YOU PLEASE STATE YOUR NAME  
10:29AM 4 AND THEN SPELL IT, PLEASE.  
10:29AM 5 THE WITNESS: MY NAME IS BRENT BINGHAM. B-R-E-N-T,  
10:29AM 6 B-I-N-G-H-A-M.  
10:29AM 7 THE COURT: THANK YOU.  
10:29AM 8 COUNSEL.  
10:29AM 9 MR. BOSTIC: THANK YOU, YOUR HONOR.  
10:29AM 10 **DIRECT EXAMINATION**  
10:29AM 11 BY MR. BOSTIC:  
10:29AM 12 Q. GOOD MORNING, MR. BINGHAM.  
10:29AM 13 A. GOOD MORNING.  
10:29AM 14 Q. IF YOU ARE FULLY VACCINATED AND ARE COMFORTABLE DOING SO,  
10:29AM 15 I UNDERSTAND THE COURT WILL ALLOW YOU TO TESTIFY WITHOUT A  
10:29AM 16 MASK.  
10:29AM 17 A. OKAY. I AM.  
10:29AM 18 Q. MR. BINGHAM, WAS THERE A TIME WHEN YOU HAD SOME BLOOD  
10:29AM 19 TESTING DONE BY A LAB CALLED THERANOS?  
10:29AM 20 A. YES.  
10:29AM 21 Q. AND DO YOU REMEMBER APPROXIMATELY WHAT YEAR THAT TOOK  
10:29AM 22 PLACE?  
10:29AM 23 A. 2015.  
10:29AM 24 Q. I'D LIKE TO ASK YOU SOME QUESTIONS ABOUT THAT TESTING, BUT  
10:29AM 25 LET ME GET SOME BACKGROUND ABOUT YOU FIRST IF I COULD.

10:30AM 1 WHERE DO YOU CURRENTLY LIVE?

10:30AM 2 A. PHOENIX, ARIZONA.

10:30AM 3 Q. AND IS THAT WHERE YOU WERE LIVING IN THE 2015 TIME AS

10:30AM 4 WELL?

10:30AM 5 A. YES.

10:30AM 6 Q. IN 2015, WERE YOU EMPLOYED?

10:30AM 7 A. YES.

10:30AM 8 Q. AND WHAT WAS YOUR PROFESSION AT THAT TIME?

10:30AM 9 A. AT THAT TIME I WAS SELF-EMPLOYED DOING BODY WORK THERAPY.

10:30AM 10 Q. AND DID YOU HAVE A CAREER WHERE YOU WERE IN A DIFFERENT

10:30AM 11 PROFESSION BEFORE THAT?

10:30AM 12 A. YEAH. I HAD SEVERAL GEOLOGISTS BEFORE THAT, FIELD

10:30AM 13 GEOLOGISTS IN MINING.

10:30AM 14 ALSO A MINER ENGINEER UNDERGROUND.

10:30AM 15 Q. AND FOR APPROXIMATELY HOW MANY YEARS DID YOU WORK IN

10:30AM 16 GEOLOGY AND MINE ENGINEERING?

10:30AM 17 A. BASICALLY 20, 20 YEARS.

10:30AM 18 Q. LEADING UP TO THE 2015 TIME PERIOD, HAD YOU HAD

10:31AM 19 SIGNIFICANT EXPERIENCE WITH BLOOD TESTING?

10:31AM 20 A. YES.

10:31AM 21 Q. HOW DID YOU COME TO HAVE EXPERIENCE WITH BLOOD TESTING?

10:31AM 22 A. I HAVE A GENETIC MUTATION THAT CAUSES ME TO MAKE TOO MANY

10:31AM 23 PLATELETS, SO I NEED TO KEEP TRACK OF MY PLATELET COUNT.

10:31AM 24 Q. AND YOU SAID YOU NEED TO KEEP TRACK OF YOUR PLATELET

10:31AM 25 COUNT.

10:31AM 1 DO YOU DO THAT THROUGH BLOOD TESTING?

10:31AM 2 A. YES.

10:31AM 3 Q. AND GENERALLY SPEAKING, ABOUT HOW FREQUENTLY DO YOU GET A

10:31AM 4 BLOOD TEST TO MONITOR YOUR PLATELET COUNT?

10:31AM 5 A. ON AVERAGE, FOUR TIMES A YEAR.

10:31AM 6 Q. AND THE CONDITION THAT YOU WERE DIAGNOSED WITH, CAN YOU

10:31AM 7 TELL US A LITTLE BIT ABOUT THAT, WHAT THE SYMPTOMS ARE AND WHY

10:31AM 8 IT'S NECESSARY THAT YOU MONITOR YOUR PLATELET COUNT?

10:31AM 9 A. YEAH. THE MUTATION SIGNALS TO MAKE MORE PLATELETS THAN I

10:31AM 10 NEED, AND IT'S CONTROLLED BY A DRUG CALLED HYDROXYUREA, AND

10:32AM 11 ALSO ASPRIN, BABY ASPRIN EVERY DAY.

10:32AM 12 IT'S IMPORTANT FOR ME TO KNOW WHAT MY PLATELETS ARE

10:32AM 13 BECAUSE THERE'S AN ENVIRONMENTAL CAUSES, LIKE IF I GET A -- I

10:32AM 14 CAN CONTROL MY PLATELETS IN A SECONDARY WAY, LIKE THROUGH DIET;

10:32AM 15 AND DURING HAYFEVER SEASON, IT WILL MAKE MY PLATELETS GO UP; OR

10:32AM 16 IF I GET STUNG BY INSECTS, THAT WILL MAKE ME SPIKE MY PLATELETS

10:32AM 17 AS WELL.

10:32AM 18 Q. AND DOES THE CONDITION THAT YOU HAVE MANIFEST IN ANY

10:32AM 19 SYMPTOMS IN YOU? DOES IT CAUSE ANY EFFECTS IN THE WAY YOU

10:32AM 20 FEEL?

10:32AM 21 A. YES, IT DOES.

10:32AM 22 Q. CAN YOU DESCRIBE THOSE?

10:32AM 23 A. THOSE EFFECTS ARE LETHARGY AS THEY GET HIGH; ALSO I'LL GET

10:33AM 24 TINGLING IN MY HANDS AND EXTREMITIES; I HAVE BEEN ABLE TO, BY

10:33AM 25 THE WAY IT MAKES ME FEEL, BASICALLY GAUGE WHAT MY PLATELETS

10:33AM 1 ARE.

10:33AM 2 Q. AND WHEN WERE YOU FIRST DIAGNOSED WITH THE CONDITION THAT

10:33AM 3 WE ARE TALKING ABOUT?

10:33AM 4 A. 2010.

10:33AM 5 Q. AND HAVE YOU BEEN GETTING REGULAR PLATELET TESTING SINCE

10:33AM 6 THEN?

10:33AM 7 A. YES.

10:33AM 8 Q. AND DO YOU STILL GET REGULAR PLATELET TESTING EVEN TODAY?

10:33AM 9 A. YES, I DO.

10:33AM 10 Q. ARE YOU AWARE OF WHETHER OR NOT THE PLATELET TEST IS PART

10:33AM 11 OF A BLOOD TEST PANEL CALLED THE COMPLETE BLOOD COUNT?

10:33AM 12 A. YES, I AM.

10:33AM 13 Q. AND IS IT?

10:33AM 14 A. IT IS.

10:33AM 15 Q. AND YOU MENTIONED THAT, FROM PAYING ATTENTION TO YOUR

10:34AM 16 SYMPTOMS, YOU WERE ABLE TO GET A SENSE OF HOW DIFFERENT

10:34AM 17 PLATELET LEVELS WOULD AFFECT YOU; IS THAT RIGHT?

10:34AM 18 A. THAT'S CORRECT.

10:34AM 19 Q. CAN YOU EXPLAIN THAT? WHAT LEVELS WERE YOU USED TO SEEING

10:34AM 20 IN YOUR PLATELET TEST, AND HOW DID THAT CORRESPOND TO HOW YOU

10:34AM 21 WOULD FEEL?

10:34AM 22 A. THE NORMAL RANGE IS 125 TO 400, AND I FEEL PRETTY NORMAL

10:34AM 23 CLEAR UP TO AROUND THE MID 700'S.

10:34AM 24 AND SO I KEEP IT AT -- TRY TO KEEP IT IN THAT RANGE, LIKE,

10:34AM 25 50 PERCENT ABOVE THE HIGH END OF NORMAL RANGE.

10:34AM 1 Q. SO THE SYMPTOMS THAT YOU MENTIONED, THE LETHARGY AND OTHER  
10:34AM 2 SYMPTOMS, YOU START NOTICING THOSE AT AROUND LEVEL 800; IS THAT  
10:35AM 3 CORRECT?  
10:35AM 4 A. YEAH, IF I START APPROACHING 800. AND BY 900, IT'S,  
10:35AM 5 IT'S -- I'M NOT DOING MUCH.  
10:35AM 6 Q. AND OVER THE YEARS YOU'VE GOTTEN THESE PLATELET TEST  
10:35AM 7 RESULTS, WHAT LEVELS DO YOU TYPICALLY SEE IN YOUR SYSTEM GIVEN  
10:35AM 8 YOUR CONDITION AND THE MEDICATION THAT YOU'RE ON?  
10:35AM 9 A. I'M PRETTY MUCH BETWEEN 700 AND 750.  
10:35AM 10 Q. AND LEADING UP TO SUMMER OF 2015, WHERE WERE YOU GETTING  
10:35AM 11 YOUR PLATELET TESTING DONE?  
10:35AM 12 A. COULD YOU REPEAT?  
10:35AM 13 Q. SURE. LEADING UP TO SUMMER OF 2015, WHAT LAB WERE YOU  
10:35AM 14 USING FOR PLATELET TESTING?  
10:35AM 15 A. OH. I USED A LAB BASED OUT OF CALIFORNIA -- I MEAN,  
10:35AM 16 FLORIDA. I COULD GET ONLINE AND ORDER UP A LAB AND PAY FOR IT,  
10:35AM 17 AND THEN I WOULD GET A WRITTEN ORDER SIGNED BY A DOCTOR IN  
10:36AM 18 FLORIDA AND THEN I WOULD GO TO LABCORP TO GET THE LAB DONE.  
10:36AM 19 Q. SO THE ACTUAL PLACE WHERE THE BLOOD WAS DRAWN AND THE  
10:36AM 20 ANALYSIS WAS DONE YOU SAID WAS LABCORP?  
10:36AM 21 A. YES.  
10:36AM 22 Q. AND WAS THAT IN THE PHOENIX AREA AS WELL?  
10:36AM 23 A. YES.  
10:36AM 24 Q. YOU MENTIONED PAYING FOR IT.  
10:36AM 25 IS IT YOUR PRACTICE TO PAY DIRECTLY FOR THE PLATELET

10:36AM 1 TESTING THAT YOU GET DONE?

10:36AM 2 A. YEAH, I PAY OUT OF POCKET.

10:36AM 3 Q. LET'S TALK ABOUT THERANOS THEN.

10:36AM 4 HOW DID YOU FIRST LEARN ABOUT THAT COMPANY?

10:36AM 5 A. THROUGH THE PRESS, MEDIA, DIFFERENT SOURCES.

10:36AM 6 Q. AND WAS THIS IN THE TIME PERIOD LEADING UP TO WHEN YOU

10:36AM 7 EVENTUALLY WENT TO THEM FOR TESTING?

10:36AM 8 A. YES, IT WAS.

10:36AM 9 Q. SO YOU MENTIONED PRESS AND OTHER SOURCES. I JUST WANT TO

10:36AM 10 MAKE SURE THAT WE'RE COVERING EVERYTHING.

10:36AM 11 SO BESIDES PRESS ARTICLES, WHAT ELSE DO YOU REMEMBER

10:36AM 12 SEEING, OR WHERE ELSE DO YOU REMEMBER LOOKING FOR INFORMATION

10:36AM 13 ABOUT THERANOS?

10:36AM 14 A. MAINLY FROM READING STUFF ONLINE. LIKE, I WOULD READ

10:37AM 15 "WIRED" MAGAZINE A LOT ON TECHNOLOGICAL INNOVATIONS.

10:37AM 16 MY MEMORY OF EXACTLY WHERE I SAW IT ISN'T THAT CLEAR, BUT

10:37AM 17 I JUST KNOW THE WAY I WOULD LOOK FOR INFORMATION.

10:37AM 18 Q. AND THAT'S MY NEXT QUESTION.

10:37AM 19 YOU MENTIONED LOOKING FOR INFORMATION, SO LET ME ASK, THE

10:37AM 20 INFORMATION THAT YOU SAW ABOUT THERANOS, WAS IT THINGS THAT YOU

10:37AM 21 HAPPENED TO COME UPON IN JUST BROWSING FOR OTHER NEWS, OR DID

10:37AM 22 YOU SPECIFICALLY INVESTIGATE THE COMPANY BEFORE YOU WENT THERE?

10:37AM 23 A. WELL, THAT WAS INITIALLY THAT WAY, BUT THEN I STARTED

10:37AM 24 LOOKING FOR IT.

10:37AM 25 Q. AS PART OF THAT INVESTIGATION, DID YOU ALSO VISIT THE

10:37AM 1 THERANOS WEBSITE?

10:37AM 2 A. YES.

10:37AM 3 Q. YOU MENTIONED THAT YOU READ "WIRED" FREQUENTLY AROUND THAT

10:37AM 4 TIME PERIOD; IS THAT CORRECT?

10:38AM 5 A. CORRECT.

10:38AM 6 Q. I'D LIKE TO SHOW YOU AN ARTICLE THAT IS ALREADY IN

10:38AM 7 EVIDENCE AS EXHIBIT 5801.

10:38AM 8 MAY WE PUBLISH, YOUR HONOR?

10:38AM 9 THE COURT: YES.

10:38AM 10 BY MR. BOSTIC:

10:38AM 11 Q. LET'S GO TO THE SECOND PAGE OF THIS EXHIBIT.

10:38AM 12 MR. BINGHAM, DO YOU SEE HERE THERE'S A TITLE, "ONE DROP,

10:38AM 13 INFINITE DATA, HOW ELIZABETH HOLMES BUILT A BETTER BLOOD TEST?"

10:38AM 14 DO YOU SEE THAT?

10:38AM 15 A. YES.

10:38AM 16 Q. AND IF WE CAN, LET'S ZOOM IN ON THE CONTENT OF THAT FIRST

10:38AM 17 PAGE. APOLOGIES, THIS WILL BE A LITTLE DIFFICULT TO READ.

10:38AM 18 BUT I'LL DRAW YOUR ATTENTION TO THE BOTTOM OF THAT

10:38AM 19 PARAGRAPH, AND DO YOU SEE THAT IT SAYS, "INSTEAD OF VIALS OF

10:38AM 20 BLOOD, ONE FOR EVERY TEST NEEDED, THERANOS REQUIRES ONLY A

10:38AM 21 PINPRICK AND A DROP OF BLOOD"?

10:38AM 22 DO YOU SEE THAT?

10:38AM 23 A. YES, YES.

10:38AM 24 Q. AND IT SAYS, "WITH THAT, THEY CAN PERFORM HUNDREDS OF

10:38AM 25 TESTS, FROM STANDARD CHOLESTEROL CHECKS TO," LET'S GO TO THE

10:38AM 1 NEXT PAGE, ZOOM IN ON THE UPPER LEFT, "TO SOPHISTICATED GENETIC  
10:39AM 2 ANALYSES."  
10:39AM 3 DO YOU SEE THAT?  
10:39AM 4 A. YES.  
10:39AM 5 Q. AND IT GOES ON TO SAY, "THE RESULTS ARE FASTER, MORE  
10:39AM 6 ACCURATE, AND FAR CHEAPER THAN CONVENTIONAL METHODS."  
10:39AM 7 DO YOU SEE THAT?  
10:39AM 8 A. YES, I DO.  
10:39AM 9 Q. LET ME ASK, AROUND THE TIME THAT YOU WERE LOOKING INTO  
10:39AM 10 THERANOS AND DECIDING WHERE TO GET YOUR BLOOD WORK DONE, DID  
10:39AM 11 CLAIMS ABOUT ACCURACY MATTER TO YOU?  
10:39AM 12 A. YES.  
10:39AM 13 Q. CAN YOU EXPLAIN WHY THAT IS THE CASE?  
10:39AM 14 A. IT'S THE CASE BECAUSE I HAVE A -- THE DISEASE THAT I HAVE  
10:39AM 15 CAUSES MY PLATELETS TO -- NEED TO BE CONTROLLED BY A  
10:39AM 16 MEDICATION, AND I LIKE TO MINIMIZE THE MEDICATION BECAUSE IN  
10:39AM 17 THE LONG RUN IT CAN WORK TOO WELL, AND BECAUSE I HAVE A DISEASE  
10:40AM 18 OF EXCESS, I MAKE TOO MANY PLATELETS.  
10:40AM 19 BUT THE CELLS THE DRUG I TAKE GOES AFTER CAN ALSO AFFECT  
10:40AM 20 POTENTIALLY RED BLOOD CELLS AND WHITE BLOOD CELLS, SO I WANT TO  
10:40AM 21 MINIMIZE THAT LEVEL.  
10:40AM 22 SO IT'S IMPORTANT FOR ME TO KNOW IF I CAN CONTROL IT WITH  
10:40AM 23 DIET, EXERCISE, AND THINGS THAT I CAN DO.  
10:40AM 24 Q. AND THAT IS ALL IN FURTHERANCE OF THE GOAL OF NOT TAKING  
10:40AM 25 MORE OF THAT MEDICATION THAN YOU NEED TO?

10:40AM 1 A. YES.

10:40AM 2 MR. BOSTIC: MAY I APPROACH, YOUR HONOR?

10:40AM 3 THE COURT: YES.

10:40AM 4 MR. BOSTIC: (HANDING.)

10:40AM 5 Q. MR. BINGHAM, I'D LIKE TO GO OVER A FEW DOCUMENTS WITH YOU.

10:40AM 6 I'VE JUST HANDED YOU A BINDER.

10:40AM 7 IF I COULD START BY ASKING YOU TO TURN TO TAB 5839.

10:41AM 8 A. OKAY.

10:41AM 9 Q. AND AT 5839, DO YOU SEE AN EMAIL FROM THERANOS CUSTOMER

10:41AM 10 SERVICE TO YOU IN AUGUST OF 2015?

10:41AM 11 A. YES, I DO.

10:41AM 12 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5839.

10:41AM 13 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

10:41AM 14 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:41AM 15 (GOVERNMENT'S EXHIBIT 5839 WAS RECEIVED IN EVIDENCE.)

10:41AM 16 BY MR. BOSTIC:

10:41AM 17 Q. DO YOU SEE, MR. BINGHAM, THAT THIS IS AN EMAIL SENT TO YOU

10:41AM 18 FROM CUSTOMERSERVICE@THERANOS.COM?

10:41AM 19 A. YES, I DO.

10:41AM 20 Q. AND IT SAYS, "THERANOS, YOUR VISIT CODE," AND THEN THE

10:41AM 21 TEXT SAYS "WELCOME TO THERANOS."

10:41AM 22 DO YOU SEE THAT?

10:41AM 23 A. YES, I DO.

10:41AM 24 Q. AROUND THIS TIME PERIOD, DID YOU START GOING TO THERANOS

10:41AM 25 FOR BLOOD TESTING?

10:41AM 1 A. YES.

10:41AM 2 Q. WHY DID YOU DECIDE TO SWITCH FROM LABCORP AND TRY OUT

10:41AM 3 THERANOS IN AUGUST OF 2015?

10:41AM 4 A. UM, THE MAIN REASON WAS THAT THERANOS HAD MADE IT POSSIBLE

10:42AM 5 TO ORDER MY OWN LAB TESTS IN ARIZONA, AND THEN THE PRICE, IT

10:42AM 6 WAS LIKE AROUND \$5.

10:42AM 7 Q. AND WAS THAT LESS EXPENSIVE THAN THE CONVENTIONAL LAB YOU

10:42AM 8 HAD BEEN GOING TO BEFORE?

10:42AM 9 A. YEAH, AN ORDER OF MAGNITUDE LESS.

10:42AM 10 Q. AROUND THIS TIME PERIOD, SO AUGUST 12TH OF 2015, DID YOU

10:42AM 11 GO TO THERANOS FOR A PLATELET TEST FOR THE FIRST TIME?

10:42AM 12 A. YES.

10:42AM 13 Q. DO YOU STILL HAVE THE RESULTS THAT YOU OBTAINED FROM THIS

10:42AM 14 FIRST BLOOD TEST AT THERANOS?

10:42AM 15 A. NO, I DO NOT.

10:42AM 16 Q. AND DO YOU REMEMBER ANYTHING ABOUT WHAT THOSE RESULTS WERE

10:42AM 17 AND WHAT YOUR REACTION TO THEM WERE?

10:42AM 18 A. I REMEMBER THAT THEY WERE HIGH COMPARED TO HOW I FELT.

10:42AM 19 Q. CAN YOU TELL US MORE ABOUT THAT?

10:43AM 20 YOU TESTIFIED EARLIER THAT YOUR RESULTS WERE TYPICALLY

10:43AM 21 ABOVE THE REFERENCE RANGE; IS THAT RIGHT?

10:43AM 22 A. CORRECT.

10:43AM 23 Q. AND SO WHAT WAS IT ABOUT THE THERANOS RESULTS THAT GAVE

10:43AM 24 YOU PAUSE?

10:43AM 25 A. THAT THE WAY THAT I FELT DIDN'T CORRELATE WITH THE NUMBERS

10:43AM 1 THAT PRESENTED.

10:43AM 2 Q. FOR THAT FIRST VISIT, DO YOU RECALL HOW YOUR BLOOD WAS

10:43AM 3 DRAWN? HOW THE SAMPLE WAS TAKEN?

10:43AM 4 A. A FINGER, THE METHOD THAT THEY WERE ADVERTISING.

10:43AM 5 Q. A BLOOD DRAW FROM A FINGER PRICK?

10:43AM 6 A. YES.

10:43AM 7 Q. FOLLOWING THAT TEST RESULT THAT YOU SAID DIDN'T QUITE

10:43AM 8 MATCH HOW YOU WERE FEELING, WHAT DID YOU DECIDE ABOUT WHETHER

10:43AM 9 TO KEEP USING THERANOS OR NOT?

10:43AM 10 A. I DECIDED TO KEEP TRYING FOR A BIT TO SEE.

10:43AM 11 Q. AND YOU SAID "TO SEE."

10:43AM 12 WHAT WERE YOU TRYING TO SEE IN CONTINUING TO USE THERANOS?

10:44AM 13 A. SEE IF IT WOULD CORRELATE TO THE WAY THAT I WAS FEELING.

10:44AM 14 Q. IF I COULD ASK YOU TO TURN THE PAGE TO TAB 5840.

10:44AM 15 AND AT 5840, DO YOU SEE ANOTHER MESSAGE FROM THERANOS

10:44AM 16 RELATING TO A SECOND VISIT TO THAT LAB?

10:44AM 17 A. YES, I DO.

10:44AM 18 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5840.

10:44AM 19 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

10:44AM 20 THE COURT: IT'S ADMITTED AND IT MAY BE PUBLISHED.

10:44AM 21 (GOVERNMENT'S EXHIBIT 5840 WAS RECEIVED IN EVIDENCE.)

10:44AM 22 BY MR. BOSTIC:

10:44AM 23 Q. MR. BINGHAM, DO YOU SEE HERE THAT THIS IS A VISIT TO

10:44AM 24 THERANOS ON AUGUST 21ST, 2015?

10:44AM 25 A. YES, I DO.

10:44AM 1 Q. AND THIS IS ABOUT TEN DAYS AFTER THE PREVIOUS VISIT THAT  
10:44AM 2 WE LOOKED AT THE RECORD FOR; IS THAT RIGHT?  
10:44AM 3 A. YES.  
10:44AM 4 Q. AND WHY DID YOU GO SO SOON THIS TIME AFTER THE LAST TIME?  
10:45AM 5 I THINK YOU TESTIFIED EARLIER THAT TYPICALLY THERE WOULD BE A  
10:45AM 6 COUPLE OF MONTHS IN BETWEEN YOUR TESTS.  
10:45AM 7 A. BECAUSE I WAS, I WAS ON A TRACK TO SEE IF I WANTED TO USE  
10:45AM 8 THEM.  
10:45AM 9 Q. SO IS THIS STILL PART OF EVALUATING THE LAB TO SEE IF THEY  
10:45AM 10 COULD RETURN RESULTS THAT YOU THOUGHT WERE RELIABLE?  
10:45AM 11 A. YES, AND ALSO THE PRICE.  
10:45AM 12 Q. OKAY. FOR THIS SECOND VISIT, DO YOU STILL HAVE THE  
10:45AM 13 RECORDS THAT SHOW WHAT THE ACTUAL NUMBERS WERE WHEN YOU GOT  
10:45AM 14 THAT?  
10:45AM 15 A. NO, I DO NOT. THEY WERE ON THE WEBSITE THAT THERANOS HAD.  
10:45AM 16 Q. OKAY. TELL US ABOUT THAT. HOW WERE YOU ABLE TO ACCESS  
10:45AM 17 THE RESULTS AT THIS TIME?  
10:45AM 18 A. ON HERE IT SAYS -- LET'S SEE. THEY WOULD GIVE ME A CODE,  
10:46AM 19 BUT ON THIS 5840 I DON'T SEE THAT CODE. I SAW IT ON 5839.  
10:46AM 20 Q. BUT SPEAKING GENERALLY, DID YOU GET HARD COPY RESULTS IN  
10:46AM 21 THE MAIL? WERE YOU EMAILED THE RESULTS THEMSELVES?  
10:46AM 22 A. NO, NO, I WAS NOT.  
10:46AM 23 Q. BUT HOW DID YOU GET THE ACTUAL RESULTS?  
10:46AM 24 A. I WOULD LOOK ON THE WEBSITE AND HAVE AN ACCESSIBLE FILE  
10:46AM 25 THERE.

10:46AM 1 Q. FOLLOWING THIS RESULT, DID YOU HAVE A REACTION TO THE  
10:46AM 2 VALUE THAT YOU WERE GETTING BACK AND DID YOU MAKE ANY DECISIONS  
10:46AM 3 ABOUT WHAT TO DO NEXT?

10:46AM 4 A. YEAH. AND I TALKED TO MY DOCTOR ABOUT IT AND DECIDED TO  
10:46AM 5 DO THE COMPARATIVE LAB.

10:46AM 6 Q. AND WHEN YOU SAY "COMPARATIVE LAB," WHAT ARE YOU REFERRING  
10:46AM 7 TO?

10:46AM 8 A. WELL, I WAS GOING TO GO TO ANOTHER -- HE HAD A LAB THAT HE  
10:46AM 9 USED, SO I WAS GOING TO GET A THERANOS DRAW, AND THEN I DROVE  
10:46AM 10 OVER TO THE OTHER LAB AND GOT A DRAW FROM THEM, TOO.

10:47AM 11 Q. AND WHY DID YOU DECIDE TO TAKE THAT ADDITIONAL STEP?

10:47AM 12 A. BECAUSE I WANTED TO CHECK THE NUMBERS BETWEEN EACH OTHER.

10:47AM 13 Q. AT THIS POINT, WERE THE NUMBERS THAT YOU WERE GETTING FROM  
10:47AM 14 THERANOS STILL NOT LINING UP WITH WHAT YOU WERE FEELING?

10:47AM 15 A. YEAH, THEY WERE NOT.

10:47AM 16 Q. LET ME ASK YOU TO LOOK AT TAB 2730 IN YOUR BINDER.

10:47AM 17 A. I'M THERE.

10:47AM 18 Q. AND AT 2730, DO YOU SEE A LAB REPORT FROM THERANOS  
10:47AM 19 DETAILING SOME OF YOUR RESULTS FROM A VISIT AT THE END OF  
10:47AM 20 AUGUST 2015?

10:47AM 21 A. YES, I DO.

10:47AM 22 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 2730.

10:47AM 23 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

10:47AM 24 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:47AM 25 (GOVERNMENT'S EXHIBIT 2730 WAS RECEIVED IN EVIDENCE.)

10:47AM 1 BY MR. BOSTIC:

10:47AM 2 Q. SO, MR. BINGHAM, CAN YOU TELL US WHAT WE'RE LOOKING AT

10:47AM 3 HERE?

10:47AM 4 A. THIS IS A LAB THAT I COPIED SO I COULD SHOW IT TO MY

10:48AM 5 DOCTOR FROM THERANOS.

10:48AM 6 Q. SO IS THAT WHY -- WELL, LET ME -- LET ME ASK, WAS THIS THE

10:48AM 7 LAB THAT YOU TOOK FROM THERANOS FOR THE PURPOSE OF COMPARING IT

10:48AM 8 WITH A CONVENTIONAL LAB RESULT?

10:48AM 9 A. YES, IT IS.

10:48AM 10 Q. AND DO YOU SEE AT THE TOP OF THIS SCREEN IT INDICATES THAT

10:48AM 11 THE VISIT DATE FOR THIS LAB WAS ON AUGUST 27TH, 2015?

10:48AM 12 A. YES.

10:48AM 13 Q. AND THE LOCATION OF THE DRAW SHOWS UP AS THERANOS SERVICE

10:48AM 14 CENTER ON 16TH STREET IN PHOENIX.

10:48AM 15 DO YOU SEE THAT?

10:48AM 16 A. YES.

10:48AM 17 Q. AND IS THAT WHERE YOU WENT TO GET YOUR BLOOD DRAWN?

10:48AM 18 A. YES, IT IS.

10:48AM 19 Q. MOVING DOWN THAT PAGE A LITTLE BIT.

10:48AM 20 DO YOU SEE THAT THERE'S A SECTION HIGHLIGHTED, SUMMARY OF

10:48AM 21 ABNORMAL RESULTS?

10:48AM 22 A. YES, I DO.

10:48AM 23 Q. AND ONE OF THE ENTRIES THERE READS PLT.

10:48AM 24 DO YOU SEE THAT?

10:48AM 25 A. YES.

10:48AM 1 Q. AND IS THAT THE ABBREVIATION FOR THE PLATELET RESULT?

10:48AM 2 A. IT IS.

10:48AM 3 Q. AND THE RESULT LISTED HERE IS 909.6.

10:49AM 4 DO YOU SEE THAT?

10:49AM 5 A. THAT'S CORRECT.

10:49AM 6 Q. AND IT'S FLAGGED AS HIGH; IS THAT RIGHT?

10:49AM 7 A. YES.

10:49AM 8 Q. WHAT WAS YOUR REACTION TO GETTING THIS RESULT OF 900-PLUS

10:49AM 9 ON THIS DAY IN AUGUST OF 2015?

10:49AM 10 A. THAT IT WASN'T RIGHT.

10:49AM 11 Q. AND WHAT MADE YOU THINK THAT?

10:49AM 12 A. THE WAY I FELT, AND THEN -- BASICALLY THE WAY I FELT. I

10:49AM 13 DIDN'T FEEL LIKE IT WAS IN THE 900'S.

10:49AM 14 Q. AND CAN YOU JUST EXPLAIN IN DETAIL WHAT YOU MEAN BY THE

10:49AM 15 WAY YOU FELT?

10:49AM 16 A. IF I WAS AT 900, I WOULD BE, LIKE, WANTING TO BE HOME IN

10:49AM 17 BED BASICALLY.

10:49AM 18 Q. IT WOULD MANIFEST IN THAT LETHARGY THAT YOU WERE TALKING

10:49AM 19 ABOUT EARLIER?

10:49AM 20 A. CORRECT.

10:49AM 21 Q. IF I COULD ASK YOU TO TURN BACK IN YOUR BINDER ONE TAB TO

10:49AM 22 2729.

10:49AM 23 AND AT 2729, DO YOU SEE ANOTHER LAB REPORT FOR YOU FROM A

10:50AM 24 COLLECTION ON THAT SAME DAY, BUT THIS TIME FROM ACCESS MEDICAL

10:50AM 25 LABORATORIES?

10:50AM 1 A. YES, I DO.

10:50AM 2 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 2729.

10:50AM 3 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

10:50AM 4 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:50AM 5 (GOVERNMENT'S EXHIBIT 2729 WAS RECEIVED IN EVIDENCE.)

10:50AM 6 MR. BOSTIC:

10:50AM 7 Q. OKAY. SO, MR. BINGHAM, IF WE ZOOM IN ON THE TOP PORTION,

10:50AM 8 DO WE SEE THAT THIS IS FROM ACCESS MEDICAL LABORATORIES?

10:50AM 9 IS THAT ANOTHER BLOOD TESTING LAB?

10:50AM 10 A. YES. IT'S THE ONE THAT MY PHYSICIAN USED.

10:50AM 11 Q. AND DID YOUR PHYSICIAN SEND YOU TO THIS LAB ON THIS DATE?

10:50AM 12 A. HE TOOK THE DRAW AND THEN SENT IT TO THEM.

10:50AM 13 Q. OKAY. AND THE COLLECTION DATE HERE IS AUGUST 27TH, 2015;

10:50AM 14 IS THAT RIGHT?

10:50AM 15 A. CORRECT.

10:50AM 16 Q. AND WAS THAT THE SAME DATE AS THE BLOOD DRAW FROM

10:50AM 17 THERANOS?

10:50AM 18 A. YES, IT WAS.

10:50AM 19 Q. DID YOU INTENTIONALLY VISIT BOTH LABS ON THE SAME DATE?

10:50AM 20 A. YES, I DID.

10:50AM 21 Q. AND WHY DID YOU CHOOSE TO DO IT THAT WAY?

10:51AM 22 A. BECAUSE I FIGURED I SHOULD BE AS CLOSE AS POSSIBLE.

10:51AM 23 Q. WAS THIS FOR A COMPARISON PURPOSE?

10:51AM 24 A. FOR COMPARISON PURPOSES.

10:51AM 25 Q. LET'S LOOK FURTHER DOWN ON THAT PAGE.

10:51AM 1 AND DO YOU SEE UNDER COMPLETE BLOOD COUNT THERE'S A LINE  
10:51AM 2 FOR PLATELET COUNT?  
10:51AM 3 A. YES, I SEE IT.  
10:51AM 4 Q. AND DO YOU SEE INDICATED THERE IS THE NUMBER 756?  
10:51AM 5 A. YES, I DO.  
10:51AM 6 Q. AND COMPARING THOSE TWO RESULTS, THE 909 FROM THERANOS AND  
10:51AM 7 THE 756 FROM THE CONVENTIONAL LAB, WAS THERE ONE OF THOSE THAT  
10:51AM 8 LINED UP MORE WITH HOW YOUR SYMPTOMS WERE PRESENTING THAT DAY?  
10:51AM 9 A. YES, THIS LAB, THE ACCESS LAB.  
10:51AM 10 Q. OKAY. WE CAN SET THAT ASIDE.  
10:51AM 11 A. AFTER YOU RECEIVED THOSE AUGUST RESULTS AND YOU DID THE  
10:51AM 12 COMPARISON, DID YOU TAKE ANY ACTION?  
10:52AM 13 A. YEAH. SHORTLY THEREAFTER, AFTER COMMUNICATING WITH MY  
10:52AM 14 DOCTOR, I ENDED UP CALLING.  
10:52AM 15 Q. AND YOU SAID THAT YOU CALLED.  
10:52AM 16 Q. WHO DID YOU CALL AT THAT TIME?  
10:52AM 17 A. THE NUMBER FOR THERANOS.  
10:52AM 18 Q. DO YOU REMEMBER THE DATE OF YOUR CALL TO THERANOS?  
10:52AM 19 A. NOT EXACTLY. IT WAS EARLY IN SEPTEMBER.  
10:52AM 20 Q. OKAY.  
10:52AM 21 A. LIKE THE 10TH OR SOMETHING. LIKE THE 10TH OR SOMEWHERE  
10:52AM 22 AROUND THERE.  
10:52AM 23 Q. WOULD LOOKING AT A COMPLAINT LOG ENTRY FROM YOUR CALL ON  
10:52AM 24 THAT DAY REFRESH YOUR MEMORY ABOUT WHEN IT WAS?  
10:52AM 25 A. YEAH, UH-HUH.

10:52AM 1 Q. IF I COULD ASK YOU TO LOOK AT TAB 5841 IN YOUR BINDER.

10:53AM 2 ACTUALLY, THE PRINT HERE IS SO SMALL.

10:53AM 3 YOUR HONOR, COULD WE DISPLAY THIS ONLY FOR THE WITNESS --

10:53AM 4 THE COURT: YES.

10:53AM 5 MR. BOSTIC: -- SO THAT WE CAN ZOOM IN?

10:53AM 6 THE COURT: SURE.

10:53AM 7 MR. BOSTIC: SO, MS. WACHS, IF WE CAN DISPLAY FOR

10:53AM 8 THE WITNESS PAGE 16 OF TAB 5841.

10:53AM 9 AND IF WE CAN ZOOM IN ON IT.

10:53AM 10 THE WITNESS: I CAN SEE IT.

10:53AM 11 BY MR. BOSTIC:

10:53AM 12 Q. OKAY. CAN YOU SEE YOUR NAME LISTED THERE AS SOMEONE WHO

10:53AM 13 CALLED THERANOS?

10:53AM 14 A. UH-HUH.

10:53AM 15 Q. I'LL JUST ASK YOU TO TAKE A MOMENT TO REVIEW THAT ROW TO

10:53AM 16 YOURSELF WITHOUT READING IT OUT LOUD.

10:53AM 17 A. YES. MOVE IT A HAIR, A LITTLE BIT. THAT'S GOOD. OKAY.

10:53AM 18 Q. DOES THAT REFRESH YOUR MEMORY ABOUT THE DATE ON WHICH YOU

10:54AM 19 MADE THAT PHONE CALL TO THERANOS?

10:54AM 20 A. YEAH. IT SAID SEPTEMBER 12TH.

10:54AM 21 Q. SO I'LL ASK YOU TO JUST LOOK AT THAT TABLE ONE MORE TIME

10:54AM 22 AT THE DATE ON THE FAR LEFT?

10:54AM 23 A. UH-HUH.

10:54AM 24 Q. AND DO YOU SEE A DATE INDICATING A CALL IN OCTOBER 2015?

10:54AM 25 A. OH, THAT'S WHAT I MEAN. SORRY.

10:54AM 1 LET'S SEE. YEAH, 10/12/2015.

10:54AM 2 Q. DID YOU CALL THERANOS IN OCTOBER OF 2015?

10:54AM 3 A. YES.

10:54AM 4 Q. AND WHAT WAS THE PURPOSE OF YOUR CALL TO THERANOS AT THAT

10:54AM 5 TIME?

10:54AM 6 A. I WANTED THEM TO KNOW -- BECAUSE I WANTED IT TO WORK, IT

10:54AM 7 WAS CONVENIENT, I WANTED TO LET THEM KNOW THAT THE PLATELETS

10:55AM 8 WEREN'T MATCHING UP WITH WHAT THEY -- THAT THEIR RESULTS WERE

10:55AM 9 INCORRECT.

10:55AM 10 Q. AND YOU SAID YOU WANTED IT TO WORK.

10:55AM 11 WHY DID YOU WANT THERANOS TO BE A LAB THAT YOU COULD RELY

10:55AM 12 ON?

10:55AM 13 A. CONVENIENCE.

10:55AM 14 Q. AND YOU MENTIONED THE COST EARLIER AS WELL.

10:55AM 15 A. YEAH, THE COST AND CONVENIENCE.

10:55AM 16 Q. DURING THAT CALL, DO YOU REMEMBER WHOM YOU SPOKE TO?

10:55AM 17 A. NO, I DON'T.

10:55AM 18 Q. DO YOU REMEMBER WHETHER DURING THAT CALL YOU GOT ANY

10:55AM 19 EXPLANATIONS FOR THE RESULTS THAT YOU WERE SEEING?

10:55AM 20 A. NO. I DON'T EVEN KNOW IF, IF THIS RECORDED A MESSAGE OR

10:55AM 21 NOT. I CAN'T REMEMBER.

10:55AM 22 Q. ALL RIGHT. DO YOU RECALL WHETHER THIS WAS THE ONLY

10:55AM 23 POTENTIAL CONVERSATION THAT YOU HAD WITH SOMEONE AT THERANOS,

10:55AM 24 OR WERE THERE ANY FOLLOW-UP DISCUSSIONS?

10:55AM 25 A. I WOULD HAVE CONVERSATIONS WITH PEOPLE WHO DREW MY BLOOD.

10:56AM 1 Q. AND -- I'M SORRY. I DIDN'T MEAN TO INTERRUPT YOU.

10:56AM 2 A. BUT THEY COULDN'T EVER ANSWER.

10:56AM 3 Q. WHAT QUESTIONS WERE YOU ASKING THOSE PEOPLE?

10:56AM 4 AND LET ME START JUST BY CLARIFYING. ARE YOU TALKING

10:56AM 5 ABOUT THE INDIVIDUALS WHO WORKED FOR THERANOS OR WALGREENS WHO

10:56AM 6 WERE DRAWING THE BLOOD FOR THESE TESTS?

10:56AM 7 A. YEAH, THE PEOPLE WHO WOULD ACTUALLY DRAW THE BLOOD.

10:56AM 8 Q. AND WHAT QUESTIONS WERE YOU ASKING THEM?

10:56AM 9 A. FOR WHEN THEY STOPPED DOING THE FINGER PRICK AND STARTED

10:56AM 10 DRAWING CONVENTIONALLY, I ASKED THEM WHY THEY WERE DOING THAT.

10:56AM 11 Q. SO LET ME CIRCLE BACK TO THAT THEN.

10:56AM 12 YOU TESTIFIED THAT FOR THE FIRST TEST THAT YOU HAD, THE

10:56AM 13 BLOOD WAS DRAWN BY A FINGERSTICK; IS THAT RIGHT?

10:56AM 14 A. YES.

10:56AM 15 Q. AT SOME POINT DID YOU HAVE THERANOS TESTS THAT WERE DRAWN

10:56AM 16 BY A VEIN DRAW INSTEAD OF THE FINGERSTICK?

10:56AM 17 A. YES.

10:56AM 18 Q. DO YOU RECALL WHEN THAT SWITCH HAPPENED?

10:56AM 19 A. I VAGUELY REMEMBER AT LEAST TWO, SO I THINK THOSE WERE THE

10:57AM 20 FIRST TWO.

10:57AM 21 Q. WHEN YOU WERE GETTING VEIN DRAWS, YOU TESTIFIED THAT YOU

10:57AM 22 ASKED THE STAFF THERE WHY THAT WAS HAPPENING; IS THAT RIGHT?

10:57AM 23 A. CORRECT.

10:57AM 24 Q. AND WHAT KINDS OF RESPONSES DID YOU GET BACK?

10:57AM 25 A. WE DON'T KNOW. THEY -- IT WAS JUST AN ANSWER THAT IS MORE

10:57AM 1 OF, LIKE, SAYING IT WAS OUT OF THEIR PROVINCE TO KNOW WHY.

10:57AM 2 Q. FOLLOWING THOSE EXPERIENCES AND YOUR CALL TO THERANOS IN

10:57AM 3 OCTOBER 2015, DID YOU USE THE LAB AGAIN AFTER THAT?

10:57AM 4 A. I USED IT ONE LAST TIME.

10:57AM 5 Q. AND IF I COULD ASK YOU TO LOOK AT 5843 IN YOUR BINDER.

10:57AM 6 A. OKAY.

10:57AM 7 Q. AND AT 5843, DO YOU SEE AN EMAIL MEMORIALIZING A VISIT

10:57AM 8 AFTER OCTOBER 2015?

10:57AM 9 A. YES, DECEMBER 11TH, 2015.

10:58AM 10 Q. ALL RIGHT.

10:58AM 11 YOUR HONOR, THE GOVERNMENT OFFERS 5843.

10:58AM 12 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

10:58AM 13 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:58AM 14 (GOVERNMENT'S EXHIBIT 5843 WAS RECEIVED IN EVIDENCE.)

10:58AM 15 BY MR. BOSTIC:

10:58AM 16 Q. AND, MR. BINGHAM, DO YOU SEE HERE THERE'S AN EMAIL

10:58AM 17 MEMORIALIZING --

10:58AM 18 THE COURT: THE MONITORS ARE NOT ON. LET'S SEE.

10:58AM 19 ARE THEY ON? NO.

10:58AM 20 JUROR: IT TAKES TIME.

10:58AM 21 THE COURT: NOW THEY'RE ON.

10:58AM 22 MR. BOSTIC: THANK YOU, YOUR HONOR.

10:58AM 23 Q. MR. BINGHAM, IS THIS AN EMAIL CONFIRMING A VISIT TO

10:58AM 24 THERANOS WHERE YOU WENT THERE ON DECEMBER 11TH, 2015?

10:58AM 25 A. CORRECT.

10:58AM 1 Q. WHY GO BACK TO THERANOS IN DECEMBER GIVEN THE EXPERIENCES  
10:58AM 2 THAT YOU HAD HAD IN AUGUST AND OCTOBER?  
10:59AM 3 A. I WANTED TO SEE ONE LAST TIME IF IT WAS GOING TO BE IN  
10:59AM 4 LINE WITH WHAT MY EXPECTATIONS WERE.  
10:59AM 5 Q. HAD YOU HAD ANY COMMUNICATIONS WITH THERANOS IN BETWEEN  
10:59AM 6 YOUR CALL AND THIS TIME THAT HAD INCREASED YOUR CONFIDENCE?  
10:59AM 7 A. NO.  
10:59AM 8 Q. IF I COULD ASK YOU TO LOOK AT 5838.  
10:59AM 9 AND ONCE YOU GET THERE.  
10:59AM 10 A. OKAY.  
10:59AM 11 Q. FOR THE VISIT TO THERANOS IN DECEMBER 2015, DO YOU STILL  
10:59AM 12 HAVE A COPY OF THE RESULTS THEMSELVES?  
10:59AM 13 A. NO, I DO NOT.  
10:59AM 14 Q. AT 5838, ARE YOU LOOKING AT A MESSAGE THAT YOU RECEIVED  
11:00AM 15 FROM THERANOS FOLLOWING THAT?  
11:00AM 16 A. YES.  
11:00AM 17 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5838.  
11:00AM 18 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.  
11:00AM 19 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.  
11:00AM 20 (GOVERNMENT'S EXHIBIT 5838 WAS RECEIVED IN EVIDENCE.)  
11:00AM 21 BY MR. BOSTIC:  
11:00AM 22 Q. SO, MR. BINGHAM, IS THIS AN EMAIL THAT YOU RECEIVED A FEW  
11:00AM 23 DAYS AFTER THAT DECEMBER 11TH VISIT TO THERANOS?  
11:00AM 24 A. YES, IT WAS A FEW DAYS THE FOLLOWING WEEK.  
11:00AM 25 Q. IT SAYS HERE, "HI MR. BINGHAM,

11:00AM 1 "OUR LABORATORY STAFF RECENTLY CONTACTED YOU OR YOUR  
11:00AM 2 DESIGNATED EMERGENCY CONTACT REGARDING A LAB RESULT THAT MAY  
11:00AM 3 INDICATE THE NEED FOR IMMEDIATE MEDICAL ATTENTION."  
11:00AM 4 DO YOU SEE THAT?  
11:00AM 5 A. YES.  
11:00AM 6 Q. HAD YOU RECEIVED ONE OF THESE ALERT MESSAGES BEFORE FROM  
11:00AM 7 THERANOS?  
11:00AM 8 A. NO, I HAD NOT.  
11:00AM 9 Q. AROUND THIS TIME PERIOD, TELL US ABOUT YOUR SYMPTOMS, IF  
11:00AM 10 YOU REMEMBER. WERE THEY UNIQUE IN ANY WAY?  
11:00AM 11 A. NO. I WAS FEELING PRETTY NORMAL.  
11:01AM 12 Q. WERE YOU FEELING THE SAME WAY THAT YOU WOULD FEEL WHEN YOU  
11:01AM 13 WOULD GET YOUR TYPICAL RESULTS BACK SHOWING A PLATELET LEVEL OF  
11:01AM 14 ABOUT 700?  
11:01AM 15 A. THAT'S CORRECT.  
11:01AM 16 Q. FOLLOWING THIS LAST VISIT TO THERANOS, DID YOU CONTINUE TO  
11:01AM 17 USE THE LAB?  
11:01AM 18 A. NO. THIS WAS THE ICING ON THE CAKE. THEY HADN'T REACHED  
11:01AM 19 OUT TO ME AT ALL. THIS IS ALL I GOT.  
11:01AM 20 AND I ACTUALLY LAUGHED WHEN I READ IT BECAUSE I JOKED TO  
11:01AM 21 MY WIFE, WELL, I GUESS I SHOULD GO TO THE EMERGENCY ROOM. BUT  
11:01AM 22 I KNEW I DIDN'T NEED TO.  
11:01AM 23 Q. SO I THINK YOU MAYBE JUST EXPLAINED IT, BUT WHY WAS THIS  
11:01AM 24 FUNNY TO YOU AT THE TIME?  
11:01AM 25 A. BECAUSE IT WAS WRONG.

11:01AM 1 Q. AND DID THIS FINAL EXPERIENCE HAVE ANY EFFECT ON YOUR  
11:01AM 2 WILLINGNESS TO GO TO THERANOS AGAIN IN THE FUTURE?  
11:02AM 3 A. YEAH. I NEVER WENT AGAIN.  
11:02AM 4 Q. WHEN YOU DID GO TO THERANOS, YOU TOLD US A LITTLE BIT  
11:02AM 5 ABOUT THE EXPERIENCE THAT YOU HAD THERE.  
11:02AM 6 ASIDE FROM THE ANSWERS, OR NONANSWERS, THAT YOU GOT TO THE  
11:02AM 7 QUESTION ABOUT THE VEIN DRAWS, DID YOU FIND THE STAFF WORKING  
11:02AM 8 AT THOSE LOCATIONS TO BE POLITE AND PROFESSIONAL?  
11:02AM 9 A. YES, I DID.  
11:02AM 10 Q. HOW ABOUT THE FACILITIES THEMSELVES? WERE THEY CLEAN AND  
11:02AM 11 WELCOMING?  
11:02AM 12 A. YEAH, IT WAS A GOOD SETUP.  
11:02AM 13 Q. SO AS FAR AS THE ACTUAL EXPERIENCE OF VISITING THERANOS  
11:02AM 14 AND HAVING THE BLOOD DRAWN, WAS THAT A RELATIVELY PLEASANT  
11:02AM 15 EXPERIENCE?  
11:02AM 16 A. YES.  
11:02AM 17 Q. AS A PATIENT, WHAT IS MORE IMPORTANT TO YOU, HAVING THAT  
11:02AM 18 KIND OF PLEASANT EXPERIENCE, OR HAVING BLOOD TEST RESULTS THAT  
11:02AM 19 ARE ACCURATE AND RELIABLE?  
11:02AM 20 A. ACCURATE AND RELIABLE IS WHAT I NEED.  
11:03AM 21 MR. BOSTIC: MAY I HAVE A MOMENT, YOUR HONOR?  
11:03AM 22 THE COURT: YES.  
11:03AM 23 (DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)  
11:03AM 24 MR. BOSTIC: NO FURTHER QUESTIONS. THANK YOU.  
11:03AM 25 THE COURT: CROSS-EXAMINATION?

11:03AM	1	<b>CROSS-EXAMINATION</b>
11:03AM	2	BY MR. COOPERSMITH:
11:03AM	3	Q. GOOD MORNING, MR. BINGHAM.
11:03AM	4	A. GOOD MORNING.
11:03AM	5	Q. MY NAME IS JEFF COOPERSMITH, AND I REPRESENT MR. BALWANI
11:03AM	6	IN THIS CASE.
11:03AM	7	A. UH-HUH.
11:03AM	8	Q. AND I'M GOING TO ASK YOU SOME QUESTIONS TO FOLLOW UP ON
11:03AM	9	SOME OF THE THINGS THAT MR. BOSTIC ASKED.
11:03AM	10	OKAY?
11:03AM	11	A. OKAY.
11:03AM	12	Q. SO TO START WITH, MR. BOSTIC, ON DIRECT EXAMINATION,
11:03AM	13	TALKED ABOUT A CALL THAT YOU HAD MADE AT ONE POINT TO THERANOS.
11:03AM	14	A. CORRECT.
11:03AM	15	Q. AND YOU SPOKE TO SOMEONE THERE?
11:04AM	16	A. I THINK IT WAS A RECORDING. I JUST RECORDED THE MESSAGE.
11:04AM	17	Q. OKAY. I THINK HE SHOWED YOU SOMETHING TO REFRESH YOUR
11:04AM	18	MEMORY, AND THAT WAS ON OCTOBER 12TH OF 2015.
11:04AM	19	DO YOU REMEMBER THAT?
11:04AM	20	A. YES.
11:04AM	21	Q. OKAY. AND WHEN YOU CALLED, YOU DON'T REMEMBER WHO THE
11:04AM	22	OTHER SIDE OF THE LINE, WHETHER IT WAS A RECORDING OR A REAL
11:04AM	23	PERSON, YOU DON'T KNOW WHERE THEY ACTUALLY WERE, DO YOU?
11:05AM	24	A. NO, I DO NOT.
11:05AM	25	Q. YEAH. AND YOU LIVE IN ARIZONA?

11:05AM 1 A. YES.

11:05AM 2 Q. AND SO THEY COULD HAVE BEEN IN ARIZONA FOR ALL YOU KNOW;

11:05AM 3 RIGHT?

11:05AM 4 A. YEAH. I TALKED TO EMPLOYEES WHEN I WENT TO GET MY BLOOD

11:05AM 5 DRAWS AND THEY TOLD ME THAT THEY HAD A FACILITY IN --

11:05AM 6 MR. BOSTIC: OBJECTION. HEARSAY.

11:05AM 7 THE COURT: SUSTAINED.

11:05AM 8 THAT LAST RESPONSE IS STRICKEN, LADIES AND GENTLEMEN.

11:05AM 9 BY MR. COOPERSMITH:

11:05AM 10 Q. OKAY. SO PUTTING ASIDE WHAT ANYONE SAID TO YOU, YOU

11:05AM 11 VISITED WALGREENS IN ARIZONA; CORRECT?

11:05AM 12 A. CORRECT.

11:05AM 13 Q. YEAH. AND, AGAIN, JUST SO WE'RE CLEAR FOR THE RECORD,

11:05AM 14 WHEN YOU MADE THAT CALL IN OCTOBER OF 2015, YOU DON'T KNOW

11:05AM 15 WHERE THE PERSON OR RECORDING WAS LOCATED ON THE OTHER SIDE OF

11:05AM 16 THE LINE; CORRECT?

11:05AM 17 A. CORRECT.

11:05AM 18 Q. OKAY. SO LET'S JUST TALK ABOUT THE TESTING FOR A MINUTE.

11:05AM 19 SO YOU HAD A TOTAL OF FOUR TESTS AT THERANOS; CORRECT?

11:05AM 20 A. CORRECT.

11:05AM 21 Q. AND THE FIRST TEST THAT YOU HAD, WAS THAT A VENOUS DRAW OR

11:05AM 22 A FINGERSTICK?

11:05AM 23 A. FINGERSTICK.

11:05AM 24 Q. AND WHEN I SAY "VENOUS DRAW" -- WE HAVE TO BE CAREFUL NOT

11:05AM 25 TO TALK OVER EACH OTHER.

11:05AM 1 WHEN I SAY "VENOUS DRAW," DO YOU UNDERSTAND THAT'S THE  
11:05AM 2 TYPICAL WAY OF BLOOD BEING DRAWN FROM THE ARM?  
11:05AM 3 A. YES, I DO.  
11:05AM 4 Q. AND FINGERSTICK IS JUST A LITTLE PRICK ON THE FINGER;  
11:06AM 5 RIGHT?  
11:06AM 6 A. YES.  
11:06AM 7 Q. AND THE VERY FIRST TEST THAT YOU TOOK, YOU RECALL THAT  
11:06AM 8 BEING A FINGERSTICK?  
11:06AM 9 A. YES.  
11:06AM 10 Q. OKAY. I THINK YOU SAID ON DIRECT THAT BECAUSE OF YOUR  
11:06AM 11 CONDITION -- AND I'M SORRY ABOUT THAT -- BUT BECAUSE OF THE  
11:06AM 12 CONDITION THAT YOU HAVE, YOU HAVE TO GET BLOOD TESTS TO MONITOR  
11:06AM 13 YOUR PLATELET COUNT; RIGHT?  
11:06AM 14 A. YES.  
11:06AM 15 Q. AND YOU HAD BEEN DOING THIS FOR HOW MANY YEARS BEFORE YOU  
11:06AM 16 STARTED GOING TO THERANOS?  
11:06AM 17 A. SINCE I WAS DIAGNOSED.  
11:06AM 18 Q. AND ABOUT WHEN WAS THAT?  
11:06AM 19 A. 2010.  
11:06AM 20 Q. OKAY. SO BY THE TIME YOU WENT TO THERANOS, IT HAD ALREADY  
11:06AM 21 BEEN AROUND FIVE YEARS THAT YOU HAD BEEN HAVING THESE BLOOD  
11:06AM 22 TESTS?  
11:06AM 23 A. YES.  
11:06AM 24 Q. OKAY. AND ALL OF THE OTHER BLOOD TESTS THAT YOU HAD  
11:06AM 25 BEFORE YOU FIRST WENT TO THERANOS, WERE THEY ALL VENOUS DRAW OR

11:06AM 1 WERE SOME OF THEM FINGERSTICK?

11:06AM 2 A. ALL VENOUS DRAW.

11:06AM 3 Q. ALL VENOUS DRAW. OKAY.

11:06AM 4 THE SECOND, THIRD, AND FOURTH TESTS, THE OTHER THREE TESTS

11:06AM 5 AFTER THAT FIRST ONE AT THERANOS, DO YOU RECALL WHETHER THEY

11:06AM 6 WERE VENOUS DRAW OR FINGERSTICK?

11:07AM 7 A. I DO NOT RECALL CLEARLY.

11:07AM 8 I THINK I HAD TWO FINGER PRICKS TOTAL.

11:07AM 9 Q. OKAY. I WANT TO SHOW YOU SOMETHING TO SEE IF I COULD

11:07AM 10 REFRESH YOUR MEMORY ABOUT THAT.

11:07AM 11 A. OKAY.

11:07AM 12 Q. AND IN -- LET ME HAND YOU A BINDER. ONE MINUTE.

11:07AM 13 MAY I APPROACH, YOUR HONOR?

11:07AM 14 THE COURT: YES.

11:07AM 15 MR. COOPERSMITH: (HANDING.)

11:07AM 16 THANK YOU.

11:07AM 17 Q. OKAY. MR. BINGHAM, THERE'S A SERIES OF TABS WITH NUMBERS

11:07AM 18 THERE.

11:07AM 19 IF YOU COULD TURN TO TAB 28131.

11:08AM 20 A. I'M THERE.

11:08AM 21 Q. AND DO YOU SEE THAT THIS IS A MEMO REFLECTING A PRIOR

11:08AM 22 INTERVIEW YOU GAVE TO PEOPLE AT THE U.S. GOVERNMENT?

11:08AM 23 A. YES.

11:08AM 24 Q. AND YOU REMEMBER THAT?

11:08AM 25 A. YES.

11:08AM 1 Q. OKAY. AND IF YOU COULD TURN TO THE SECOND PAGE, AND IF  
11:08AM 2 YOU GO TO THE THIRD FULL PARAGRAPH, AND IT'S A VERY SHORT  
11:08AM 3 PARAGRAPH, AND IT CONSISTS OF ONLY ONE SENTENCE STARTING WITH  
11:08AM 4 THE WORD "THERANOS USED."  
11:08AM 5 DO YOU SEE THAT?  
11:08AM 6 A. YES.  
11:08AM 7 Q. AND IF YOU COULD READ IT OUT TO YOURSELF, PLEASE. NOT OUT  
11:08AM 8 LOUD.  
11:09AM 9 AND DOES THAT REFRESH YOUR MEMORY THAT THE FIRST TEST YOU  
11:09AM 10 HAD AT THERANOS WAS FINGERSTICK, AND THE REMAINDER VISITS WERE  
11:09AM 11 USING THE VEIN DRAW?  
11:09AM 12 A. YES.  
11:09AM 13 Q. THANK YOU, MR. BINGHAM.  
11:09AM 14 OKAY. DURING YOUR DIRECT EXAMINATION YOU SAW A -- ONE  
11:09AM 15 THERANOS REPORT WITH SOME LAB RESULTS FOR YOU.  
11:09AM 16 DO YOU REMEMBER THAT ON DIRECT EXAMINATION?  
11:09AM 17 A. COULD YOU REPEAT?  
11:09AM 18 Q. I CAN MAKE IT EVEN MORE CLEAR. MY APOLOGIES.  
11:09AM 19 IF YOU COULD TAKE A LOOK IN THE BINDER THAT THE GOVERNMENT  
11:09AM 20 HANDED YOU, MR. BOSTIC HANDED YOU, IF YOU COULD GO TO  
11:09AM 21 EXHIBIT 22 -- I'M SORRY, 2730.  
11:09AM 22 A. I'M THERE.  
11:09AM 23 Q. AND THAT WAS A REPORT FROM THERANOS THAT YOU RECEIVED  
11:10AM 24 BASED ON A VISIT THAT YOU HAD FOR A BLOOD TEST ON AUGUST 27TH  
11:10AM 25 OF 2015; IS THAT RIGHT?

11:10AM 1 A. CORRECT.

11:10AM 2 Q. OKAY. AND OTHER THAN THAT REPORT, THE OTHER REPORTS THAT

11:10AM 3 YOU HAD FOR VISITS AT THERANOS, THE OTHER THREE, I THINK YOU

11:10AM 4 SAID YOU NO LONGER HAVE COPIES OF THOSE REPORTS; IS THAT RIGHT?

11:10AM 5 A. NO, I DO NOT.

11:10AM 6 Q. YOU DON'T. OKAY.

11:10AM 7 BUT I THINK YOU ALSO SAID ON DIRECT THAT YOU AT ONE POINT

11:10AM 8 WERE ABLE TO ACCESS THOSE REPORTS ON THERANOS'S WEBSITE?

11:10AM 9 A. YES.

11:10AM 10 Q. AND YOU HAD, LIKE, A PASSCODE TO BE ABLE TO GET INTO THAT

11:10AM 11 SYSTEM?

11:10AM 12 A. I THINK THAT'S HOW IT WORKED, YEAH.

11:10AM 13 Q. OKAY. AND DID YOU DISCUSS WITH THE GOVERNMENT WHETHER YOU

11:10AM 14 COULD OBTAIN ANY OF THESE OTHER REPORTS?

11:10AM 15 A. WHETHER I WHAT?

11:10AM 16 Q. DID YOU DISCUSS WITH THE GOVERNMENT WHETHER YOU COULD

11:10AM 17 OBTAIN ANY OF THESE OTHER THREE REPORTS THAT WE DON'T HAVE IN

11:10AM 18 COURT TODAY?

11:10AM 19 A. I TRIED, YEAH.

11:10AM 20 Q. OKAY. DID YOU WORK WITH THE GOVERNMENT ON THAT?

11:11AM 21 A. NO.

11:11AM 22 Q. OKAY. AND DID THEY EVER TELL YOU THAT THEY HAD ANY

11:11AM 23 ABILITY TO RECOVER ANY OF THOSE REPORTS?

11:11AM 24 MR. BOSTIC: OBJECTION. HEARSAY. 401.

11:11AM 25 THE WITNESS: NO.

11:11AM 1 THE COURT: SUSTAINED.

11:11AM 2 THE LAST ANSWER IS STRICKEN, LADIES AND GENTLEMEN.

11:11AM 3 BY MR. COOPERSMITH:

11:11AM 4 Q. SO YOU JUST TRIED ON YOUR OWN TO SEE IF YOU COULD FIND

11:11AM 5 THOSE; IS THAT RIGHT?

11:11AM 6 A. THE REASON WHY I HAD THIS ONE IS BECAUSE I COPIED IT TO

11:11AM 7 SHOW IT TO MY DOCTOR, SO IT WAS IN MY GMAIL ACCOUNT. SO IT WAS

11:11AM 8 EASY TO RECOVER.

11:11AM 9 I DON'T HAVE ACCESS TO THE OTHERS.

11:11AM 10 Q. OKAY. SO YOU WERE NOT ABLE TO RECOVER ANY OTHER REPORTS,

11:11AM 11 RESULTS FROM THE THERANOS SYSTEM WHEN YOU TRIED TO DO THAT; IS

11:11AM 12 THAT RIGHT.

11:11AM 13 A. YEAH.

11:11AM 14 Q. OKAY. I THINK YOU TESTIFIED ON DIRECT THAT YOU HAD

11:11AM 15 UNDERSTOOD, GOING INTO YOUR FIRST VISIT AT THERANOS, THAT

11:12AM 16 THERANOS WAS WORKING TO DO TESTING ON FINGERSTICK SAMPLES;

11:12AM 17 RIGHT?

11:12AM 18 A. YES.

11:12AM 19 Q. AND, IN FACT, THE FIRST TIME YOU WENT IN, THAT'S WHAT

11:12AM 20 HAPPENED; RIGHT?

11:12AM 21 A. YES.

11:12AM 22 Q. BUT THEN THE OTHER TIMES YOU HAD VENOUS DRAWS; RIGHT?

11:12AM 23 A. YES.

11:12AM 24 Q. AND YOU WEREN'T ABLE TO FIGURE OUT WHY THAT WAS BASED ON

11:12AM 25 THE CONVERSATIONS THAT YOU WERE HAVING; RIGHT?

11:12AM 1 A. I WAS NOT ABLE TO.

11:12AM 2 Q. OKAY. MAYBE THIS IS AN OBVIOUS QUESTION, BUT WHEN YOU HAD

11:12AM 3 A VENOUS DRAW, YOU KNEW WHAT WAS HAPPENING; RIGHT? YOU KNEW

11:12AM 4 THEY WERE TAKING A VENOUS DRAW FROM YOUR ARM AS OPPOSED TO YOUR

11:12AM 5 FINGER; RIGHT?

11:12AM 6 A. I HOPE SO, YES.

11:12AM 7 Q. RIGHT. BECAUSE THERE WAS A PERSON, A PHLEBOTOMIST. YOU

11:12AM 8 KNOW THAT TERM?

11:12AM 9 A. YES, I DO.

11:12AM 10 Q. AND THAT PERSON ACTUALLY TOOK A NEEDLE AND PUT IT IN A

11:12AM 11 VEIN IN YOUR ARM; RIGHT?

11:12AM 12 A. YES. I'VE HAD MANY.

11:12AM 13 Q. AND WHEN YOU SAW THAT HAPPENING, IF YOU WANTED TO LEAVE

11:12AM 14 THE ROOM AND, YOU KNOW, TO DECLINE THE TEST, YOU COULD HAVE

11:12AM 15 DONE THAT; RIGHT?

11:13AM 16 A. IF I WANTED TO, YES.

11:13AM 17 Q. RIGHT. BUT YOU DECIDED TO GO FORWARD, BECAUSE YOU WANTED

11:13AM 18 TO HAVE YOUR BLOOD TESTED; RIGHT?

11:13AM 19 A. YES.

11:13AM 20 Q. OKAY. SO I THINK YOU DESCRIBED THAT THERE WAS -- YOU

11:13AM 21 KNOW, BASED ON HOW YOU FEEL AND YOUR MONITORING OF YOUR OWN

11:13AM 22 CONDITION, YOU SEE A KIND OF CORRELATION BETWEEN THE PLATELET

11:13AM 23 LEVEL RESULTS AND HOW YOU FEEL; IS THAT RIGHT?

11:13AM 24 A. CORRECT.

11:13AM 25 Q. OKAY. BUT WHEN YOU GO OVER TIME AND HAVE TAKEN LAB TESTS

11:13AM 1 AT OTHER LABS, EVEN BESIDES THERANOS, YOUR RESULTS ARE NOT  
11:13AM 2 ALWAYS PRECISELY THE SAME INDICATING EXACTLY HOW YOU FEEL;  
11:13AM 3 RIGHT?  
11:13AM 4 AND LET ME ASK A BETTER QUESTION AND I'LL WITHDRAW THAT  
11:13AM 5 ONE.  
11:13AM 6 SO, FOR EXAMPLE, IF YOU'RE FEELING FINE -- AND I'M HOPING  
11:13AM 7 YOU'RE FEELING FINE TODAY -- BUT IF YOU'RE FEELING FINE AND YOU  
11:13AM 8 TAKE A BLOOD TEST, YOUR RESULTS MIGHT BE IN THE 700 LEVEL; IS  
11:13AM 9 THAT RIGHT?  
11:13AM 10 A. RIGHT.  
11:14AM 11 Q. BUT IT COULD BE 702 OR 710 OR 720? IT'S NOT ALWAYS  
11:14AM 12 PRECISELY THE SAME; CORRECT?  
11:14AM 13 A. CORRECT.  
11:14AM 14 Q. SO IF YOU'RE FEELING FINE AND YOU GET A BLOOD TEST, THOSE  
11:14AM 15 RESULTS FROM THE LAB COULD VARY, YOU KNOW, BY WHATEVER AMOUNT;  
11:14AM 16 IS THAT FAIR?  
11:14AM 17 A. YES.  
11:14AM 18 Q. OKAY. BUT THEN WHEN IT GETS TO A SIGNIFICANTLY HIGHER  
11:14AM 19 LEVEL, THAT GENERALLY CORRELATES WITH HOW YOU FEEL; RIGHT?  
11:14AM 20 A. CORRECT.  
11:14AM 21 Q. BUT YOUR LEVELS AT TIMES HAVE BEEN AS HIGH AS 900 OR SO;  
11:14AM 22 IS THAT RIGHT?  
11:14AM 23 A. OTHER THAN 1.2 OR -3 MILLION, YEAH.  
11:14AM 24 Q. OKAY. SO EVEN HIGHER THAN 900.  
11:14AM 25 AND ONE OF THE -- ARE YOU AWARE FROM YOUR OWN EXPERIENCE

11:14AM 1 FROM YOUR OWN CONDITION THAT ONE OF THE THINGS THAT COULD  
11:14AM 2 UNFORTUNATELY HAPPEN WITH A PERSON WITH HIGH PLATELET COUNTS IS  
11:14AM 3 THAT THERE'S A DANGER OF BLOOD CLOTS?  
11:14AM 4 A. I'M VERY AWARE OF THAT.  
11:15AM 5 Q. RIGHT. AND THAT'S ONE REASON, I'M ASSUMING, THAT YOU  
11:15AM 6 MONITOR THIS AND TAKE BLOOD TESTS AND TAKE MEDICATIONS AT  
11:15AM 7 TIMES; IS THAT RIGHT?  
11:15AM 8 A. YEAH, I TAKE MEDICATION CONSISTENTLY SINCE I WAS  
11:15AM 9 DIAGNOSED.  
11:15AM 10 Q. RIGHT. AND YOU UNDERSTAND THE REFERENCE RANGE FOR PEOPLE  
11:15AM 11 WHO DON'T HAVE THIS PARTICULAR MEDICAL CONDITION BASICALLY IS  
11:15AM 12 AROUND 0 TO 400. IS THAT THE RANGE?  
11:15AM 13 MR. BOSTIC: OBJECTION. MISSTATES THE TESTIMONY.  
11:15AM 14 THE COURT: ARE YOU ASKING FOR HIS KNOWLEDGE?  
11:15AM 15 MR. COOPERSMITH: WELL, LET ME ASK A BETTER  
11:15AM 16 QUESTION.  
11:15AM 17 Q. SO, MR. BINGHAM, WHAT DO YOU UNDERSTAND IS THE REFERENCE  
11:15AM 18 RANGE FOR SOMEONE WHO DOESN'T HAVE THIS PARTICULAR CONDITION  
11:15AM 19 THAT YOU UNFORTUNATELY SUFFER FROM?  
11:15AM 20 A. 125 TO 450, SOMEWHERE AROUND THERE.  
11:15AM 21 Q. SO EVEN A LEVEL OF 700 OR SO WOULD BE SIGNIFICANTLY HIGHER  
11:15AM 22 THAN NORMAL RANGE; IS THAT RIGHT?  
11:15AM 23 A. YES.  
11:15AM 24 Q. OKAY. AND FOR SOMEONE WHO DOESN'T HAVE THIS CONDITION, IF  
11:15AM 25 THEY TESTED IN THE 700S, THE LABORATORY OR THE DOCTOR MIGHT

11:16AM 1 HAVE SOME CAUSE FOR ALARM IF THE TEST WAS THAT HIGH IF THEY  
11:16AM 2 DIDN'T KNOW THE PERSON HAD THIS PARTICULAR CONDITION THAT YOU  
11:16AM 3 HAD; IS THAT FAIR?  
11:16AM 4 MR. BOSTIC: OBJECTION. CALLS FOR SPECULATION.  
11:16AM 5 THE COURT: SUSTAINED.  
11:16AM 6 MR. COOPERSMITH: OKAY. I'LL MOVE ON, YOUR HONOR.  
11:16AM 7 THANK YOU.  
11:16AM 8 Q. THE PLATELET COUNT TEST THAT YOU HAD AT THERANOS, AND YOU  
11:16AM 9 TESTIFIED THAT YOU DIDN'T THINK THOSE WERE CORRECT, THAT WAS  
11:16AM 10 YOUR ONLY COMPLAINT ABOUT THE TEST THAT YOU HAD AT THERANOS;  
11:16AM 11 CORRECT?  
11:16AM 12 A. YES.  
11:17AM 13 MR. COOPERSMITH: NOTHING FURTHER, YOUR HONOR.  
11:17AM 14 THE WITNESS: WELL, I'M SORRY. THE OTHER COMPLAINT  
11:17AM 15 WAS THAT THEY NEVER CONTACTED ME.  
11:17AM 16 BY MR. COOPERSMITH:  
11:17AM 17 Q. RIGHT. SO THEY NEVER CONTACTED YOU AND THE PLATELET TEST,  
11:17AM 18 AND THE PLATELET COUNT TEST SEEMED OFF, RIGHT, BUT YOU HAD NO  
11:17AM 19 OTHER COMPLAINT ABOUT THE BLOOD TESTING THAT YOU HAD DONE AT  
11:17AM 20 THERANOS; CORRECT?  
11:17AM 21 A. CORRECT.  
11:17AM 22 MR. COOPERSMITH: NOTHING FURTHER, YOUR HONOR.  
11:17AM 23 THE COURT: ANY REDIRECT?  
11:17AM 24 MR. BOSTIC: NO, YOUR HONOR.  
11:17AM 25 THE COURT: MAY THE WITNESS BE EXCUSED?

11:17AM 1 MR. COOPERSMITH: YES, YOUR HONOR.

11:17AM 2 MR. BOSTIC: NO, YOUR HONOR.

11:17AM 3 THE COURT: YOU'RE EXCUSED, SIR.

11:17AM 4 THE WITNESS: THANK YOU.

11:17AM 5 THE COURT: YOU'RE WELCOME.

11:17AM 6 DOES THE GOVERNMENT HAVE ANOTHER WITNESS TO CALL?

11:17AM 7 MR. BOSTIC: YES, YOUR HONOR.

11:17AM 8 THE GOVERNMENT CALLS ERIN TOMPKINS.

11:17AM 9 THE COURT: DO YOU HAVE ANY IDEA OF WHAT YOUR DIRECT

11:18AM 10 WOULD BE?

11:18AM 11 MR. BOSTIC: SO I WOULD ESTIMATE 20 TO 30 MINUTES

11:18AM 12 FOR THE DIRECT, YOUR HONOR.

11:18AM 13 THE COURT: SHOULD WE TAKE A BREAK NOW? LET'S DO

11:18AM 14 THAT. LET'S TAKE OUR BREAK NOW.

11:18AM 15 THANK YOU FOR THAT INFORMATION, MR. BOSTIC.

11:18AM 16 LET'S TAKE OUR FIRST BREAK. WE'LL TAKE ABOUT 30 MINUTES,

11:18AM 17 PLEASE, AND THEN WE'LL COME BACK.

11:21AM 18 (RECESS FROM 11:18 A.M. UNTIL 11:56 A.M.)

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11:56AM 1 **AFTERNOON SESSION**

11:56AM 2 THE COURT: THANK YOU. PLEASE BE SEATED.

11:56AM 3 WE'RE BACK ON THE RECORD.

11:56AM 4 THE PARTIES PREVIOUSLY PRESENT ARE PRESENT AGAIN.

11:56AM 5 OUR JURY IS PRESENT.

11:56AM 6 MR. BOSTIC, DO YOU HAVE A WITNESS TO CALL?

11:57AM 7 MR. BOSTIC: YES, YOUR HONOR.

11:57AM 8 THE UNITED STATES CALLS ERIN TOMPKINS.

11:57AM 9 THE COURT: GOOD MORNING. IF YOU WILL COME FORWARD,

11:57AM 10 PLEASE, AND STAND OVER HERE WHILE YOU FACE OUR COURTROOM

11:57AM 11 DEPUTY, AND RAISE YOUR RIGHT HAND, SHE HAS A QUESTION FOR YOU.

11:57AM 12 **(GOVERNMENT'S WITNESS, ERIN TOMPKINS, WAS SWORN.)**

11:57AM 13 THE WITNESS: I DO.

11:57AM 14 THE CLERK: THANK YOU.

11:57AM 15 THE COURT: PLEASE HAVE A SEAT UP HERE. I'LL INVITE

11:57AM 16 YOU TO MAKE YOURSELF COMFORTABLE.

11:57AM 17 FEEL FREE TO ADJUST THE CHAIR AND MICROPHONE AS YOU NEED.

11:58AM 18 THERE IS ALSO SOME WATER THERE THAT YOU CAN ENJOY IF YOU

11:58AM 19 NEED.

11:58AM 20 THE WITNESS: THANK YOU.

11:58AM 21 THE COURT: YOU'RE WELCOME.

11:58AM 22 WHEN YOU ARE COMFORTABLE, WOULD YOU PLEASE STATE YOUR NAME

11:58AM 23 AND THEN SPELL IT, PLEASE.

11:58AM 24 THE WITNESS: YES. MY NAME IS ERIN TOMPKINS. THAT

11:58AM 25 IS SPELLED T-O-M-P-K-I-N-S.

11:58AM 1 THE COURT: THANK YOU.

11:58AM 2 COUNSEL.

11:58AM 3 MR. BOSTIC: THANK YOU, YOUR HONOR.

11:58AM 4 **DIRECT EXAMINATION**

11:58AM 5 BY MR. BOSTIC:

11:58AM 6 Q. GOOD MORNING, MS. TOMPKINS.

11:58AM 7 A. GOOD MORNING.

11:58AM 8 Q. IF YOU ARE FULLY VACCINATED AND COMFORTABLE DOING SO, I

11:58AM 9 UNDERSTAND THE COURT WILL ALLOW YOU TO TESTIFY WITHOUT A MASK.

11:58AM 10 A. I AM FULLY VACCINATED, SO I'LL GO AHEAD AND TAKE THIS OFF.

11:58AM 11 Q. LET ME START BY ASKING YOU, WAS THERE A TIME THAT YOU

11:58AM 12 RECEIVED BLOOD TESTING SERVICES FROM A COMPANY CALLED THERANOS?

11:58AM 13 A. YES.

11:58AM 14 Q. AND DO YOU REMEMBER APPROXIMATELY WHEN THAT WAS?

11:58AM 15 A. I BELIEVE IT WAS MAY OF 2015.

11:58AM 16 Q. I'D LIKE TO ASK YOU SOME QUESTIONS ABOUT YOUR EXPERIENCE

11:58AM 17 WITH THERANOS, BUT FIRST LET ME ASK YOU JUST A FEW BACKGROUND

11:58AM 18 QUESTIONS.

11:58AM 19 WHERE DO YOU LIVE CURRENTLY?

11:59AM 20 A. I CURRENTLY LIVING IN PHOENIX, ARIZONA.

11:59AM 21 Q. AND WERE YOU LIVING IN THE PHOENIX AREA IN 2015?

11:59AM 22 A. YES, I WAS.

11:59AM 23 Q. WERE YOU EMPLOYED AT THAT TIME?

11:59AM 24 A. YES, I WAS.

11:59AM 25 Q. WHERE DID YOU WORK?

11:59AM 1 A. I WAS A MUSIC DIRECTOR AT A SMALL METHODIST CONGREGATION;

11:59AM 2 I HAD PRIVATE VOICE STUDENTS; AND FOR HALF OF THE YEAR I WAS

11:59AM 3 A -- LIKE A TEACHING ARTIST FOR ARIZONA OPERA.

11:59AM 4 Q. CAN YOU GIVE US A BRIEF SUMMARY OF YOUR EDUCATIONAL

11:59AM 5 BACKGROUND POST HIGH SCHOOL?

11:59AM 6 A. YES. I HAVE A BACHELOR'S IN MUSIC FROM SOUTHERN METHODIST

11:59AM 7 UNIVERSITY.

11:59AM 8 Q. SO TURNING THEN TO YOUR CONTACT WITH THERANOS, HOW DID YOU

11:59AM 9 FIRST HEAR ABOUT THAT COMPANY?

11:59AM 10 A. I BELIEVE THE FIRST TIME WAS SEEING THE MAGAZINE ON MY

11:59AM 11 FATHER'S COFFEE TABLE, "FORBES," WITH HER ON THE COVER. I

11:59AM 12 THINK THAT WAS THE FIRST. THERE MAY HAVE BEEN A TELEVISION

11:59AM 13 SPOT OR COMMERCIAL OR SOMETHING.

11:59AM 14 AND THEN AFTER THAT THERE WAS A RECOMMENDATION ON FACEBOOK

12:00PM 15 THAT I LOOKED INTO.

12:00PM 16 Q. SO I'D LIKE TO TAKE THOSE KIND OF ONE AT A TIME.

12:00PM 17 A. SURE.

12:00PM 18 Q. FIRST YOU SAID YOU SAW A MAGAZINE AT A RELATIVE'S HOUSE

12:00PM 19 WITH SOMEONE ON THE COVER. WHO DID YOU SEE?

12:00PM 20 A. WITH ELIZABETH HOLMES ON THE COVER, YES.

12:00PM 21 Q. THANK YOU.

12:00PM 22 AND JUST FOR THE COURT REPORTER'S SAKE, IF WE CAN MAKE

12:00PM 23 SURE NOT TO TALK OVER EACH OTHER?

12:00PM 24 AND THEN YOU ALSO MENTIONED THAT YOU MIGHT HAVE SEEN SOME

12:00PM 25 ADVERTISING FOR THE COMPANY?

12:00PM 1 A. YES. I BELIEVE AT SOME POINT THERE WAS A COMMERCIAL THAT  
12:00PM 2 I SAW. I'M NOT SURE WHERE.

12:00PM 3 Q. AND THEN FINALLY YOU MENTIONED SOMETHING THAT YOU SAW ON  
12:00PM 4 SOCIAL MEDIA. WAS THAT THE THIRD SOURCE?

12:00PM 5 A. YES.

12:00PM 6 Q. AT THAT TIME, THAT IS, BEFORE YOU WENT TO THE COMPANY,  
12:00PM 7 WHAT DID YOU KNOW ABOUT THERANOS AND ANYTHING THAT MADE IT  
12:00PM 8 DIFFERENT FROM CONVENTIONAL LABS?

12:00PM 9 A. I WAS FASCINATED BY THE PROPOSED, YOU KNOW, SINGLE DROP IN  
12:00PM 10 A CAPSULE IDEA OF REVOLUTIONIZING BLOOD WORK FROM ANYTHING THAT  
12:00PM 11 I HAD EVER HEARD OF BEFORE.

12:00PM 12 AND I WAS ALSO VERY ADMIRABLE OF THE YOUNG CEO.

12:01PM 13 Q. TALKING ABOUT THE SMALL SAMPLE SIZE, WHY WAS THAT  
12:01PM 14 APPEALING TO YOU AS SOMEONE CONSIDERING WHETHER TO GO THERE?

12:01PM 15 A. WELL, I MEAN, IT'S JUST FASCINATING, FRANKLY. AND THE --  
12:01PM 16 IF WE CAN ACCOMPLISH THOSE SORTS OF THINGS WITHOUT TAKING MORE  
12:01PM 17 BLOOD THAN IS ABSOLUTELY NECESSARY, THAT WAS -- THAT WAS  
12:01PM 18 COMPELLING.

12:01PM 19 Q. AT SOME POINT IN 2015, DID YOU DECIDE TO HAVE A BLOOD  
12:01PM 20 TEST?

12:01PM 21 A. YES.

12:01PM 22 Q. AND DID YOU DECIDE TO GO TO THERANOS FOR THAT BLOOD TEST?

12:01PM 23 A. YES.

12:01PM 24 Q. AND WHAT MADE YOU CHOOSE THERANOS AT THAT TIME?

12:01PM 25 A. AT THE TIME, TWO TOP PRIORITIES, OBVIOUSLY ACCURACY, BUT

12:01PM 1 ALSO COST OF THE TEST WAS A BIG CONCERN.

12:01PM 2 Q. LET'S TAKE THOSE IN REVERSE ORDER AND START WITH COST.

12:01PM 3 A. OKAY.

12:01PM 4 Q. AROUND THIS TIME, WERE YOU PLANNING TO PAY DIRECTLY FOR

12:01PM 5 THIS BLOOD TEST IN 2015?

12:02PM 6 A. YES, BECAUSE I WAS UNINSURED.

12:02PM 7 Q. AND IS THAT WHAT, IN FACT, ENDED UP HAPPENING? DID YOU

12:02PM 8 GET A TEST FROM THERANOS THAT YOU PAID FOR OUT OF POCKET?

12:02PM 9 A. YES.

12:02PM 10 Q. AND WHAT WAS IT ABOUT THE COST CONCERNS THAT MADE THERANOS

12:02PM 11 ATTRACTIVE TO YOU?

12:02PM 12 A. FROM EVERYTHING I HAD SEEN LOCALLY IN ARIZONA, THE

12:02PM 13 FEEDBACK WAS THAT IT WAS -- IF YOU'RE PAYING OUT OF POCKET, OR

12:02PM 14 IF MAYBE YOU'RE NOT, THAT IT WAS JUST MORE AFFORDABLE.

12:02PM 15 Q. YOU MENTIONED ACCURACY IN ADDITION TO COST IS SOMETHING

12:02PM 16 THAT WAS IMPORTANT TO YOU; IS THAT RIGHT?

12:02PM 17 A. YES. WELL, OF COURSE, YES.

12:02PM 18 Q. WHY DO YOU SAY "OF COURSE"? WHY WAS ACCURACY IMPORTANT TO

12:02PM 19 YOU IN SEEKING OUT A PLACE TO GET A BLOOD TEST?

12:02PM 20 A. I THINK IT'S FAIR, I THINK IT'S FAIR TO ASSUME MOST PEOPLE

12:02PM 21 WANTING BLOOD WORK DONE ARE HOPING FOR ACCURATE RESULTS.

12:02PM 22 Q. AND FROM YOUR PERSPECTIVE, SPECIFICALLY WAS ACCURACY THE

12:02PM 23 MOST IMPORTANT FACTOR FOR YOU IN DECIDING WHERE TO GET A BLOOD

12:02PM 24 TEST?

12:02PM 25 A. I THINK THAT'S A DIFFICULT QUESTION TO ANSWER ACTUALLY,

12:03PM 1 BECAUSE IF I HAD GONE ANYWHERE ELSE, I WOULD HAVE EXPECTED  
12:03PM 2 ACCURATE RESULTS.  
12:03PM 3 Q. LET ME ASK A DIFFERENT QUESTION THEN.  
12:03PM 4 WE TALKED ABOUT PRICE AND THE BENEFITS OF TESTS BEING  
12:03PM 5 AFFORDABLE.  
12:03PM 6 FROM YOUR PERSPECTIVE AS A PATIENT, IS THERE ANY VALUE IN  
12:03PM 7 BLOOD TESTS THAT ARE AFFORDABLE BUT ARE NOT SUFFICIENTLY  
12:03PM 8 ACCURATE OR RELIABLE?  
12:03PM 9 A. NO.  
12:03PM 10 Q. DO YOU REMEMBER ANYTHING ABOUT YOUR EXPERIENCE OF GETTING  
12:03PM 11 BLOOD DRAWN FROM THERANOS?  
12:03PM 12 A. I REMEMBER EXPECTING A PIN PRICK AND GETTING A VENOUS  
12:03PM 13 DRAW.  
12:03PM 14 Q. AND DO YOU REMEMBER WHERE THAT HAPPENED?  
12:03PM 15 A. I BELIEVE IT WAS IN A WALGREENS.  
12:03PM 16 Q. OKAY. DO YOU REMEMBER WHETHER YOU ASKED ANYONE AT  
12:03PM 17 THERANOS QUESTIONS ABOUT WHY YOU WERE HAVING THAT DRAW METHOD  
12:03PM 18 INSTEAD OF WHAT YOU EXPECTED?  
12:03PM 19 A. I DON'T REMEMBER. I THINK I DIDN'T ASK ANY QUESTIONS. I  
12:03PM 20 JUST SORT OF WENT WITH IT.  
12:04PM 21 MR. BOSTIC: MAY I APPROACH, YOUR HONOR?  
12:04PM 22 THE COURT: YES.  
12:04PM 23 MR. BOSTIC: (HANDING.)  
12:04PM 24 Q. MS. TOMPKINS, I'VE JUST Handed YOU A BINDER WITH A COUPLE  
12:04PM 25 OF DOCUMENTS IN IT.

12:04PM 1 THE DEFENSE HAS A COPY, AND I BELIEVE THE COURT HAS ONE

12:04PM 2 ALSO.

12:04PM 3 THE COURT: YES.

12:04PM 4 BY MR. BOSTIC:

12:04PM 5 Q. MS. TOMPKINS, IF I COULD ASK YOU TO TURN TO TAB 5483 IN

12:04PM 6 THE BINDER IN FRONT OF YOU.

12:04PM 7 A. UH-HUH.

12:04PM 8 Q. AND DO YOU RECOGNIZE WHAT IS AT 5483?

12:04PM 9 A. UH-HUH.

12:04PM 10 Q. IS THIS --

12:04PM 11 THE COURT: IS THAT YES?

12:04PM 12 THE WITNESS: YES. YES, IT IS.

12:04PM 13 BY MR. BOSTIC:

12:04PM 14 Q. THANK YOU, MS. TOMPKINS.

12:04PM 15 AND IS THIS A LAB REPORT FROM THERANOS TO YOU FROM MAY OF

12:04PM 16 2015?

12:04PM 17 A. YES. IT WAS SENT TO MY GENERAL PRACTITIONER, BUT IT IS

12:04PM 18 FOR ME.

12:04PM 19 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5483.

12:04PM 20 I'LL NOTE THAT EXTRANEous LAB RESULTS HAVE BEEN REDACTED

12:04PM 21 IN THE COPY THAT WE'RE OFFERING.

12:05PM 22 MR. COOPERSMITH: NO OBJECTION TO THIS EXHIBIT,

12:05PM 23 YOUR HONOR.

12:05PM 24 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

12:05PM 25 (GOVERNMENT'S EXHIBIT 5483 WAS RECEIVED IN EVIDENCE.)

12:05PM 1 BY MR. BOSTIC:

12:05PM 2 Q. SO IF WE CAN ZOOM IN FIRST ON THE TOP OF THE PAGE.

12:05PM 3 SO, MS. TOMPKINS, DO YOU SEE YOUR NAME APPEARING AT THE

12:05PM 4 TOP THERE?

12:05PM 5 A. YES.

12:05PM 6 Q. AND OVER TO THE RIGHT, YOU SEE UNDER PHYSICIAN THERE'S A

12:05PM 7 NAME, GERALD ASIN.

12:05PM 8 DO YOU SEE THAT?

12:05PM 9 A. YES.

12:05PM 10 Q. AND DO YOU RECOGNIZE THAT NAME?

12:05PM 11 A. YES.

12:05PM 12 Q. WHO WAS DR. ASIN?

12:05PM 13 A. HE WAS MY GENERAL PRACTITIONER DOCTOR AT THE TIME.

12:05PM 14 Q. AND WAS THIS TEST IN MAY OF 2015 ORDERED THROUGH HIM?

12:05PM 15 A. YES, IT WAS.

12:05PM 16 Q. AND YOU MENTIONED THAT THE RESULTS WERE SENT BACK TO HIM;

12:05PM 17 IS THAT CORRECT?

12:05PM 18 A. CORRECT.

12:05PM 19 Q. AT THE TOP OF THIS PAGE, DO YOU SEE THAT THERE'S A FAX

12:05PM 20 STAMP, OR A FAX STAMP LEGEND ACROSS THE TOP?

12:05PM 21 A. YES.

12:05PM 22 Q. WITH A DATE?

12:05PM 23 A. YES, I DO.

12:05PM 24 Q. SORRY. WITH THE DATE INDICATING THAT IT WAS SENT ON

12:05PM 25 MAY 11TH, 2015?

12:06PM 1 A. YES, I DO.

12:06PM 2 Q. AND DO YOU SEE NEXT TO THAT IS WRITTEN THERANOS FAX

12:06PM 3 SERVER?

12:06PM 4 A. YES.

12:06PM 5 Q. AND DO YOU SEE A LITTLE FURTHER DOWN ON THE RIGHT-HAND

12:06PM 6 SIDE OF THE PAGE THERE'S SOME CONTACT INFORMATION FOR THERANOS

12:06PM 7 LISTING A FAX NUMBER?

12:06PM 8 A. YES, I DO.

12:06PM 9 Q. AND DO YOU SEE THAT THAT FAX NUMBER BEGINS WITH A 650 AREA

12:06PM 10 CODE?

12:06PM 11 A. YES, I DO.

12:06PM 12 Q. LET'S GO DOWN AND LOOK AT THE RESULTS THEMSELVES, AND

12:06PM 13 SPECIFICALLY AT A SECTION THAT IS LABELLED SUMMARY OF ABNORMAL

12:06PM 14 RESULTS.

12:06PM 15 DO YOU SEE THAT?

12:06PM 16 A. I DO, YES.

12:06PM 17 Q. AND LISTED THERE AT THE VERY TOP IS A TEST NAME LABELED

12:06PM 18 HIV-1 PLUS 2 AB.

12:06PM 19 DO YOU SEE THAT?

12:06PM 20 A. YES.

12:06PM 21 Q. AND THE RESULT FOR THAT TEST IS LISTED AS REACTIVE.

12:06PM 22 DO YOU SEE THAT?

12:06PM 23 A. YES, I DO.

12:06PM 24 Q. AND THAT RESULT IS FLAGGED BECAUSE OF THE REACTIVE RETURN.

12:06PM 25 DO YOU SEE THAT?

12:06PM 1 A. YES.

12:06PM 2 Q. DO YOU REMEMBER RECEIVING THIS RESULT IN MAY OF 2015?

12:07PM 3 A. YES.

12:07PM 4 Q. AND WHAT WAS YOUR REACTION TO SEEING THIS REACTIVE RESULT

12:07PM 5 AT THAT TIME? DID IT SURPRISE YOU?

12:07PM 6 A. IT SURPRISED AND TERRIFIED ME.

12:07PM 7 Q. BASED ON YOUR MEDICAL HISTORY UP UNTIL THAT POINT -- LET

12:07PM 8 ME ASK, HAD YOU EVER BEEN DIAGNOSED WITH HIV OR AIDS?

12:07PM 9 A. NO.

12:07PM 10 Q. HAVE YOU EVER BEEN DIAGNOSED WITH HIV OR AIDS?

12:07PM 11 A. NO.

12:07PM 12 Q. HAVE YOU EVER EXPERIENCED ANY SYMPTOMS ATTRIBUTED TO HIV

12:07PM 13 OR AIDS?

12:07PM 14 A. NO.

12:07PM 15 Q. HAVE YOU EVER RECEIVED TREATMENT FOR HIV OR AIDS?

12:07PM 16 A. NO.

12:07PM 17 Q. LET'S LOOK AT A LITTLE FURTHER DOWN, IT MIGHT BE ON THE

12:07PM 18 NEXT PAGE OF THIS EXHIBIT, AND IN THE MIDDLE OF THE PAGE YOU

12:07PM 19 SEE THERE'S A BREAKDOWN FOR A SERIES OF HIV TESTS THAT WERE RUN

12:07PM 20 ON YOUR SAMPLE?

12:07PM 21 A. YES, I SEE THAT.

12:08PM 22 Q. AND DO YOU SEE THAT THE TEST FOR HIV-1 PLUS 2 ANTIBODIES

12:08PM 23 HAS THAT REACTIVE LABEL NEXT TO IT?

12:08PM 24 A. YES, I SEE THAT.

12:08PM 25 Q. DO YOU SEE THAT THE OTHER TESTS FOR HIV-1 ANTIBODIES,

12:08PM 1 HIV-2 ANTIBODIES, AND HIV-1 RNA ARE ALL LISTED AS NON-REACTIVE

12:08PM 2 OR NOT DETECTED?

12:08PM 3 A. YES, I SEE THAT.

12:08PM 4 Q. THEN LET'S GO DOWN TO THE BOTTOM UNDER NOTES, THIS MIGHT

12:08PM 5 BE ON THE FOLLOWING PAGE, AND THERE'S A BOX UNDER HIV-1 RNA,

12:08PM 6 AND THEN UNDER THAT BOX DO YOU SEE THERE'S A SECTION CALLED LAB

12:08PM 7 NOTES?

12:08PM 8 A. YES.

12:08PM 9 Q. AND IT READS THERE, "HIV ANTIBODIES WERE NOT CONFIRMED AND

12:08PM 10 HIV-1 RNA WAS NOT DETECTED. NO LABORATORY EVIDENCE OF HIV-1

12:08PM 11 INFECTION. FOLLOW-UP TESTING FOR HIV-2 SHOULD BE PERFORMED IF

12:08PM 12 CLINICALLY INDICATED."

12:08PM 13 DO YOU SEE THAT?

12:09PM 14 A. YES, I DO.

12:09PM 15 Q. LET'S GO BACK TO THE FIRST PAGE, AND GO BACK TO THAT

12:09PM 16 REACTIVE RESULT FOR HIV-1 PLUS 2 ANTIBODIES?

12:09PM 17 A. YES.

12:09PM 18 Q. OKAY. DO YOU SEE THAT ON THE SCREEN IN FRONT OF YOU?

12:09PM 19 A. YES, I DO.

12:09PM 20 Q. BASED ON YOUR KNOWLEDGE OF YOUR MEDICAL HISTORY, ARE YOU

12:09PM 21 AWARE OF ANY REASON WHY HIV ANTIBODIES WOULD BE PRESENT IN YOUR

12:09PM 22 BLOOD, OR WOULD HAVE BEEN IN MAY OF 2015?

12:09PM 23 A. NO, I AM NOT. AND I KNOW THAT PROBABLY SEEMS LIKE A

12:09PM 24 STRANGE RESPONSE, BUT I AM NOT. I HAVE NO REASON TO THINK THAT

12:09PM 25 THEY WOULD BE IN MY BLOODSTREAM.

12:09PM 1 Q. FOLLOWING THE RECEIPT OF THIS RESULT, WHAT ACTION DID YOU  
12:09PM 2 TAKE, IF ANY?

12:09PM 3 A. I FOLLOWED UP WITH -- WELL, I SPOKE TO MY DOCTOR FOR  
12:09PM 4 AWHILE, AND THEN I FOLLOWED UP WITH THERANOS DIRECTLY, AND --  
12:09PM 5 UH-HUH.

12:09PM 6 Q. I'M SORRY. YOU CAN FINISH YOUR ANSWER. I DIDN'T MEAN TO  
12:09PM 7 TALK OVER YOU.

12:09PM 8 A. I DIDN'T MEAN TO TALK OVER YOU EITHER.

12:10PM 9 AND I SPOKE TO A CUSTOMER SERVICE AGENT TRYING TO GET SOME  
12:10PM 10 MORE INFORMATION.

12:10PM 11 Q. THAT CALL TO THERANOS, WHY DID YOU DECIDE TO MAKE THAT  
12:10PM 12 CALL?

12:10PM 13 A. BECAUSE I WAS CONFUSED AND FRIGHTENED AND WANTED TO SEE IF  
12:10PM 14 THERE WAS SOME INFORMATION I COULD GET THAT WOULD EXPLAIN WHY  
12:10PM 15 THIS INFORMATION WAS GIVEN TO ME, WHY THESE -- LIKE, HOW COULD  
12:10PM 16 THIS CONSULT BE POSSIBLE?

12:10PM 17 Q. AND DURING THAT CALL WITH THERANOS, DO YOU RECALL SPEAKING  
12:10PM 18 TO A MEDICAL PROFESSIONAL AT ANY POINT?

12:10PM 19 A. INITIALLY I HAD NO MEMORY OF SPEAKING TO ANYONE BESIDES  
12:10PM 20 THE CUSTOMER SERVICE AGENT.

12:10PM 21 IN THE TRIAL WITH MS. HOLMES, HOWEVER, I WAS PRESENTED  
12:10PM 22 WITH AN EXCHANGE OF --

12:10PM 23 MR. COOPERSMITH: YOUR HONOR, OBJECTION. IF WE  
12:10PM 24 COULD JUST LIMIT THIS ANSWER.

12:10PM 25 THE COURT: WHY DON'T YOU ASK ANOTHER QUESTION?

12:10PM 1 MR. BOSTIC: SURE.

12:10PM 2 THE WITNESS: OKAY.

12:10PM 3 BY MR. BOSTIC:

12:10PM 4 Q. SO, MS. TOMPKINS, IF I COULD JUST ASK YOU TO TESTIFY BASED

12:11PM 5 ON YOUR MEMORY SITTING HERE TODAY --

12:11PM 6 A. RIGHT.

12:11PM 7 Q. -- DO YOU HAVE A RECOLLECTION OF SPEAKING TO A MEDICAL

12:11PM 8 PROFESSIONAL AT THERANOS? AND I'M NOT ASKING HOW YOU LEARNED

12:11PM 9 OR HOW YOU WERE REFRESHED.

12:11PM 10 A. RIGHT. I HAVE A RECOLLECTION OF SPEAKING TO A SECOND

12:11PM 11 PERSON. I DO NOT KNOW THAT THAT SECOND PERSON WAS A MEDICAL

12:11PM 12 PROFESSIONAL.

12:11PM 13 Q. LET ME ASK A MORE GENERAL QUESTION.

12:11PM 14 IN THE CONVERSATIONS THAT YOU HAD WITH EITHER OF THE, IT

12:11PM 15 SOUNDS LIKE, TWO PEOPLE THAT YOU SPOKE TO AT THERANOS --

12:11PM 16 A. UH-HUH.

12:11PM 17 Q. -- DURING THOSE CONVERSATIONS, DID YOU RECEIVE AN

12:11PM 18 EXPLANATION FOR OR A CORRECTION FOR YOUR LAB RESULTS THAT YOU

12:11PM 19 FOUND SATISFYING?

12:11PM 20 A. NO.

12:11PM 21 Q. WHAT DO YOU REMEMBER ABOUT THOSE CONVERSATIONS?

12:11PM 22 A. I WAS VERY EMOTIONAL AT THE TIME, AND I REMEMBER WHEN I

12:11PM 23 HAD THE FIRST CONVERSATION WITH THE CUSTOMER SERVICE AGENT

12:12PM 24 ASKING HER, ASKING HER THINGS THAT SHOULD HAVE BEEN ASKED OF A

12:12PM 25 MEDICAL PROFESSIONAL, AND HER SAYING, MA'AM, I'M JUST A

12:12PM 1 CUSTOMER SERVICE AGENT, LET ME REMIND YOU OF THAT. LIKE, THESE  
12:12PM 2 ARE NOT THINGS THAT I CAN ANSWER FOR YOU, WHICH I UNDERSTAND.  
12:12PM 3 BUT THE LITTLE I REMEMBER ABOUT THE SECOND PERSON WAS THAT  
12:12PM 4 THERE WAS MENTION OF THE ALGORITHM AT SOME POINT, BUT IT DIDN'T  
12:12PM 5 MAKE MUCH SENSE TO ME. IT DIDN'T ANSWER MY QUESTIONS, IF THAT  
12:12PM 6 MAKES SENSE.  
12:12PM 7 Q. AFTER YOU GOT THESE RESULTS BACK AND SPOKE TO THERANOS,  
12:12PM 8 DID YOU TAKE ANY ADDITIONAL ACTIONS TO TRY TO CONFIRM THAT TEST  
12:12PM 9 RESULT?  
12:12PM 10 A. WITH THERANOS?  
12:12PM 11 Q. OR WITH ANOTHER --  
12:12PM 12 A. FOLLOWUP? YES, I WAS ABLE TO GET AN EXAMINATION ABOUT  
12:12PM 13 THREE MONTHS LATER AT A WOMEN'S CLINIC.  
12:12PM 14 Q. AND DID THAT EXAMINATION INCLUDE A TEST FOR HIV?  
12:13PM 15 A. YES.  
12:13PM 16 Q. AND DO YOU RECALL WHAT THE RESULT WAS?  
12:13PM 17 A. NEGATIVE.  
12:13PM 18 Q. AND DO YOU TODAY STILL HAVE A COPY OF THOSE RESULTS?  
12:13PM 19 A. NO. I WAS NOT ABLE TO TRACK THOSE DOWN.  
12:13PM 20 Q. I'LL ASK YOU TO TURN TO TAB 5484 IN YOUR BINDER, PLEASE.  
12:13PM 21 A. OKAY.  
12:13PM 22 Q. AND AT 5484, DO YOU SEE A LAB REPORT FOR A TEST THAT YOU  
12:13PM 23 HAD DONE AROUND AUGUST 10TH OF 2021?  
12:13PM 24 A. YES.  
12:13PM 25 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5484.

12:13PM 1 MR. COOPERSMITH: NOTHING BEYOND WHAT WAS PREVIOUSLY  
12:13PM 2 DISCUSSED BEFORE, YOUR HONOR.  
12:13PM 3 THE COURT: ALL RIGHT. THANK YOU.  
12:13PM 4 THIS IS ADMITTED AND MAY BE PUBLISHED.  
12:13PM 5 (GOVERNMENT'S EXHIBIT 5484 WAS RECEIVED IN EVIDENCE.)  
12:13PM 6 BY MR. BOSTIC:  
12:13PM 7 Q. SO, MS. TOMPKINS, DO YOU SEE THAT IT INDICATES AT THE TOP  
12:13PM 8 THIS IS FROM CONTRA COSTA HEALTH SERVICES?  
12:13PM 9 A. YES.  
12:13PM 10 Q. WERE YOU RESIDING OR STAYING IN THE CONTRA COSTA AREA IN  
12:14PM 11 AUGUST OF 2021?  
12:14PM 12 A. YES, I WAS.  
12:14PM 13 Q. AND DO YOU SEE YOUR NAME THERE AT THE TOP?  
12:14PM 14 A. YES.  
12:14PM 15 Q. AND THIS IS LABELED "HUMAN IMMUNODEFICIENCY VIRUS (HIV)  
12:14PM 16 ANTIGEN/ANTIBODY TEST RESULTS."  
12:14PM 17 DO YOU SEE THAT?  
12:14PM 18 A. YES.  
12:14PM 19 Q. AND LET'S LOOK AT THE RESULTS. LET'S GO DOWN A LITTLE  
12:14PM 20 BIT.  
12:14PM 21 DO YOU SEE FROM YOUR TEST IN AUGUST OF 2021, THE RESULT  
12:14PM 22 REPORTED BACK WAS NEGATIVE.  
12:14PM 23 DO YOU SEE THAT?  
12:14PM 24 A. YES, I DO.  
12:14PM 25 Q. I TAKE IT YOU WERE NOT SURPRISED BY THIS RESULT?

12:14PM 1 A. NO, I WAS NOT.

12:14PM 2 Q. NEXT TO THAT NEGATIVE CHECK IT READS, "EVIDENCE OF HIV

12:14PM 3 ANTIGEN OR ANTIBODY WERE NOT DETECTED."

12:14PM 4 DO YOU SEE THAT?

12:14PM 5 A. YES.

12:14PM 6 Q. FOLLOWING YOUR EXPERIENCE WITH THERANOS, DID YOU CONTINUE

12:14PM 7 TO USE THAT LAB FOR TESTING AT ANY POINT?

12:14PM 8 A. THERANOS?

12:14PM 9 Q. YES.

12:14PM 10 A. NO.

12:15PM 11 MR. BOSTIC: MAY I HAVE A MOMENT, YOUR HONOR?

12:15PM 12 THE COURT: YES.

12:15PM 13 (DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

12:15PM 14 MR. BOSTIC: NOTHING FURTHER. THANK YOU.

12:15PM 15 THE COURT: CROSS-EXAMINATION?

12:15PM 16 **CROSS-EXAMINATION**

12:15PM 17 BY MR. COOPERSMITH:

12:15PM 18 Q. GOOD AFTERNOON, MS. TOMPKINS.

12:15PM 19 A. GOOD AFTERNOON, SIR.

12:15PM 20 Q. MY NAME IS JEFF COOPERSMITH, AND I REPRESENT MR. BALWANI

12:15PM 21 IN THIS CASE.

12:15PM 22 I'M GOING TO ASK YOU SOME QUESTIONS TO FOLLOW UP ON SOME

12:15PM 23 THINGS THAT MR. BOSTIC ASKED YOU ABOUT. OKAY?

12:15PM 24 A. UH-HUH, YES.

12:15PM 25 Q. THANK YOU.

12:16PM 1 SO JUST TO MAKE SURE I UNDERSTAND, YOU HAD A BLOOD TEST  
12:16PM 2 WITH THERANOS IN MAY OF 2015?  
12:16PM 3 A. CORRECT.  
12:16PM 4 Q. AND YOU GOT THAT THROUGH YOUR DOCTOR, WHICH WAS  
12:16PM 5 DR. GERALD ASIN?  
12:16PM 6 A. CORRECT.  
12:16PM 7 Q. OKAY. AND BEFORE THAT, YOU HAD NOT USED THERANOS BEFORE?  
12:16PM 8 A. NO, I HAD NOT.  
12:16PM 9 Q. AND THE BLOOD TEST THAT YOU ACTUALLY GOT, DID YOU GET THAT  
12:16PM 10 AT A WALGREENS STORE?  
12:16PM 11 A. YES.  
12:16PM 12 Q. AND IT WAS A DRAW FROM YOUR VEIN IN YOUR ARM; IS THAT  
12:16PM 13 RIGHT?  
12:16PM 14 A. CORRECT.  
12:16PM 15 Q. OKAY. AND WHOSE IDEA WAS IT TO GET THE HIV TEST, YOU OR  
12:16PM 16 DR. ASIN?  
12:16PM 17 A. OH, ME.  
12:16PM 18 Q. OKAY. MS. TOMPKINS, LET'S JUST GO TO YOUR TEST RESULT FOR  
12:16PM 19 A MINUTE.  
12:16PM 20 SO THE GOVERNMENT SHOWED YOU EXHIBIT 5483. AND IF YOU  
12:17PM 21 COULD TURN TO THAT. IT WILL ALSO BE ON THE SCREEN. WHATEVER  
12:17PM 22 YOUR PREFERENCE IS.  
12:17PM 23 AND IF WE COULD LOOK AT PAGE 2 FOR STARTERS.  
12:17PM 24 DO YOU SEE THAT SECTION THAT YOU REVIEWED WITH MR. BOSTIC  
12:17PM 25 WHERE IT HAS THE FOUR RESULTS STARTING WITH HIV-1 PLUS 2 AB,

12:17PM 1 AND THEN CONTINUING WITH THE LAST ONE, HIV-1 RNA.

12:17PM 2 DO YOU SEE THAT?

12:17PM 3 A. YES, I SEE THAT.

12:17PM 4 Q. AND JUST SO WE UNDERSTAND IT, THESE RESULTS WERE ALL FROM

12:17PM 5 THAT ONE SINGLE VENOUS DRAW BLOOD TEST YOU HAD AT THE WALGREENS

12:17PM 6 STORE; RIGHT?

12:17PM 7 A. YES, THEY WERE NOT MULTIPLE DRAWS THAT I RECALL.

12:17PM 8 Q. RIGHT.

12:17PM 9 A. UH-HUH.

12:17PM 10 Q. THANK YOU. IN OTHER WORDS, YOU DID NOT GO TO THERANOS

12:17PM 11 FOUR DIFFERENT TIMES TO GET THESE FOUR?

12:17PM 12 A. NO, NO.

12:17PM 13 Q. SO YOU GOT THESE RESULTS ALL AT ONCE; RIGHT?

12:17PM 14 A. YES.

12:17PM 15 Q. OKAY. AND THE ONE THAT -- AND THEY WERE SENT TO YOUR

12:17PM 16 DOCTOR'S OFFICE; RIGHT?

12:17PM 17 A. CORRECT.

12:17PM 18 Q. AND THEN THE DOCTOR IN TURN REVIEWED THE RESULTS WITH YOU?

12:18PM 19 A. YES.

12:18PM 20 Q. OKAY. SO YOU HAD THE DOCTOR TO TALK TO TO ASK ANY

12:18PM 21 QUESTIONS THAT YOU MIGHT WANT TO ASK; RIGHT?

12:18PM 22 A. I MEAN, SORT OF. I'M NOT QUITE SURE WHAT YOU MEAN BY

12:18PM 23 THAT. I -- YES, HE'S A MEDICAL PROFESSIONAL, AND WE WERE BOTH

12:18PM 24 SURPRISED BY THE RESULTS.

12:18PM 25 Q. RIGHT. AND YOU HAD A CONVERSATION WITH HIM ABOUT THIS?

12:18PM 1 A. YES.

12:18PM 2 Q. OKAY. AND IF YOU GO TO THE PAGE 3 OF THE DOCUMENT, YOU

12:18PM 3 SEE THERE'S A SENTENCE THERE, AND I WON'T READ THE WHOLE THING

12:18PM 4 OVER, OF COURSE MR. BOSTIC DID THAT, BUT THERE'S ONE SENTENCE

12:18PM 5 THAT SAYS NO LABORATORY EVIDENCE OF HIV-1 INFECTION.

12:18PM 6 DO YOU SEE THAT?

12:18PM 7 A. YES, I DO.

12:18PM 8 Q. SO THAT MEANS THAT GOOD, YOU DIDN'T HAVE HIV; RIGHT?

12:18PM 9 MR. BOSTIC: OBJECTION. FOUNDATION.

12:18PM 10 THE COURT: SUSTAINED.

12:19PM 11 BY MR. COOPERSMITH:

12:19PM 12 Q. WELL, IS THAT WHAT YOU UNDERSTOOD THAT YOUR LAB NOTES

12:19PM 13 SAID, NO EVIDENCE OF HIV-1 INFECTION?

12:19PM 14 A. AT THE TIME, NO, I DON'T THINK I DID UNDERSTAND THAT

12:19PM 15 BECAUSE THE RESULTS SHOWED REACTIVE.

12:19PM 16 Q. BUT YOU SEE THE LAB NOTE; RIGHT?

12:19PM 17 A. I SEE THE LAB NOTE HERE, YES.

12:19PM 18 Q. OKAY. I WANT TO SHOW YOU A DIFFERENT EXHIBIT SO WE CAN

12:19PM 19 TRY TO UNDERSTAND THIS, AND IT'S EXHIBIT 206 -- I'M SORRY --

12:19PM 20 20683. I'M GOING TO HAVE TO HAND YOU A BINDER BECAUSE IT'S NOT

12:19PM 21 IN THE ONE YOU HAVE.

12:19PM 22 A. OH, OKAY.

12:19PM 23 MR. COOPERSMITH: MAY I APPROACH, YOUR HONOR?

12:19PM 24 THE COURT: YES.

12:19PM 25 MR. COOPERSMITH: (HANDING.)

12:20PM 1 THE COURT: WOULD YOU STATE THE NUMBER AGAIN,  
12:20PM 2 PLEASE.  
12:20PM 3 MR. COOPERSMITH: YES, YOUR HONOR.  
12:20PM 4 IT'S 20683. 20683.  
12:20PM 5 YOUR HONOR, PURSUANT TO OUR DISCUSSION, WE ARE OFFERING  
12:20PM 6 THE ADMISSION OF PAGES 1 AND 9 OF THE DOCUMENT.  
12:20PM 7 AND I BELIEVE WITHOUT OBJECTION IN THAT REGARD.  
12:20PM 8 MR. BOSTIC: NO OBJECTION, YOUR HONOR.  
12:20PM 9 THE COURT: ALL RIGHT. THOSE PAGES ARE ADMITTED,  
12:21PM 10 AND THEY MAY BE PUBLISHED.  
12:21PM 11 (DEFENDANT'S EXHIBIT 20683, PAGES 1 AND 9, WAS RECEIVED IN  
12:21PM 12 EVIDENCE.)  
12:21PM 13 BY MR. COOPERSMITH:  
12:21PM 14 Q. OKAY. LET'S START WITH PAGE 1.  
12:21PM 15 DO YOU SEE ON PAGE 1 THIS DOCUMENT IS CALLED LABORATORY  
12:21PM 16 TESTING FOR THE DIAGNOSIS OF HIV INFECTION; RIGHT?  
12:21PM 17 A. YES.  
12:21PM 18 Q. AND THEN AT THE VERY BOTTOM, IF WE JUST BLOW THAT UP, YOU  
12:21PM 19 SEE THIS IS SOMETHING THAT IS PUBLISHED BY THE CENTERS FOR  
12:21PM 20 DISEASE CONTROL AND PREVENTION.  
12:21PM 21 DO YOU SEE THAT?  
12:21PM 22 A. YES, I DO.  
12:21PM 23 Q. AND DO YOU UNDERSTAND THAT THAT IS A FEDERAL AGENCY THAT  
12:21PM 24 WORKS ON INFECTIOUS DISEASE IN THE UNITED STATES?  
12:21PM 25 A. YES, I DO.

12:21PM 1 Q. OKAY. LET'S TURN TO PAGE 9.

12:21PM 2 DO YOU SEE THERE THAT THERE'S A DIAGRAM?

12:21PM 3 A. YES, I SEE IT.

12:21PM 4 Q. AND THEN THE DIAGRAM IS HEADED "RECOMMENDED LABORATORY HIV

12:21PM 5 TESTING ALGORITHM FOR SERUM OR PLASMA SPECIMENS"?

12:21PM 6 A. YES, I SEE THAT.

12:21PM 7 Q. OKAY. SO IN THE CDC DIAGRAM, YOU SEE AT THE TOP IT STARTS

12:22PM 8 OUT WITH "HIV-1/2 ANTIGEN/ANTIBODY COMBINATION IMMUNOASSAY."

12:22PM 9 DO YOU SEE THAT?

12:22PM 10 A. YES.

12:22PM 11 Q. OKAY. AND MR. TIEDEMANN, CAN YOU PUT ON THE SCREEN THE

12:22PM 12 PREVIOUS EXHIBIT WE WERE LOOKING AT, WHICH IS 5483, AND IN

12:22PM 13 PARTICULAR PAGE 2.

12:22PM 14 AND THEN IF WE CAN BLOW UP THE RESULTS FOR THOSE FOUR

12:22PM 15 RESULTS IN THE MIDDLE.

12:22PM 16 THANK YOU. ALL RIGHT.

12:22PM 17 SO COMPARING THE TWO DOCUMENTS, DO YOU SEE THAT "HIV-1/2

12:22PM 18 ANTIGEN/ANTIBODY COMBINATION IMMUNOASSAY," YOU SEE THAT ON THE

12:22PM 19 LEFT-HAND SIDE?

12:22PM 20 A. YES.

12:22PM 21 Q. AND THEN THAT'S FROM THE CENTERS FOR DISEASE CONTROL

12:22PM 22 PUBLICATION; RIGHT?

12:23PM 23 AND THEN ON THE RIGHT-HAND SIDE IS YOUR TEST RESULT AND IT

12:23PM 24 SAYS HIV-1 PLUS 2 AB.

12:23PM 25 DO YOU SEE THAT?

12:23PM 1 A. YES, I DO SEE THAT.

12:23PM 2 Q. OKAY. AND THAT'S THE ONE THAT SAID REACTIVE; RIGHT?

12:23PM 3 A. CORRECT.

12:23PM 4 Q. OKAY. AND THEN IF YOU GO BACK TO THE LEFT-HAND SIDE, THE

12:23PM 5 CDC PUBLICATION, DO YOU SEE THAT IT SAYS THERE'S TWO CHOICES,

12:23PM 6 EITHER PLUS OR MINUS.

12:23PM 7 DO YOU SEE THAT?

12:23PM 8 A. YES.

12:23PM 9 Q. AND IF IT'S MINUS, THEN IT SAYS BELOW THAT, NEGATIVE FOR

12:23PM 10 HIV-1 AND HIV-2 ANTIBODIES AND P24 AB.

12:23PM 11 DO YOU SEE THAT?

12:23PM 12 A. YES.

12:23PM 13 Q. AND THEN ON THE LEFT SIDE OF THE PLUS OR MINUS, IT ALSO

12:23PM 14 HAS A PLUS OPTION.

12:23PM 15 DO YOU SEE THAT?

12:23PM 16 A. YES, I SEE THAT.

12:23PM 17 Q. AND THEN IF YOU GO DOWN BELOW THE PLUS OPTION, THERE ARE

12:24PM 18 OTHER THINGS THAT WOULD HAVE TO BE DONE IN THAT EVENT; RIGHT?

12:24PM 19 A. UH-HUH.

12:24PM 20 Q. AND THEN THE NEXT THING THAT HAPPENS ON THE CDC FLOW CHART

12:24PM 21 IS "HIV-1/HIV-2 ANTIBODY DIFFERENTIATION IMMUNOASSAY."

12:24PM 22 DO YOU SEE THAT?

12:24PM 23 A. YES, I DO.

12:24PM 24 Q. OKAY. AND THEN IF YOU GO TO YOUR PATIENT RESULTS ON THE

12:24PM 25 RIGHT SIDE, YOU SEE THERE ARE TWO ADDITIONAL TESTS THAT ARE THE

12:24PM 1 SECOND AND THIRD TESTS, HIV-1 AB.

12:24PM 2 DO YOU SEE THAT?

12:24PM 3 A. YES.

12:24PM 4 Q. AND THEN SEPARATELY HIV-2 AB.

12:24PM 5 DO YOU SEE THAT?

12:24PM 6 A. YES, I DO.

12:24PM 7 Q. AND THE RESULT FOR BOTH OF THOSE IS NONREACTIVE?

12:24PM 8 A. THAT'S CORRECT.

12:24PM 9 Q. OKAY. LET'S GO BACK TO THE OTHER SIDE CDC PUBLICATION,

12:24PM 10 AND YOU SEE WHAT THE CDC PROTOCOL IS FOR VARIOUS SCENARIOS

12:24PM 11 DEPENDING ON WHAT HAPPENS WITH THE HIV-1 AND THE HIV-2 TESTS.

12:24PM 12 SO THE FIRST EXAMPLE ON THE LEFT SIDE IS HIV-1 IS POSITIVE

12:25PM 13 AND HIV-2 IS NEGATIVE; RIGHT?

12:25PM 14 A. YES, I SEE THAT.

12:25PM 15 Q. AND THEN GOING TO THE RIGHT, IT SAYS HIV-1 IS NEGATIVE AND

12:25PM 16 HIV-2 IS POSITIVE.

12:25PM 17 DO YOU SEE THAT?

12:25PM 18 A. YES, I SEE THAT.

12:25PM 19 Q. AND ANOTHER SCENARIO IS BOTH WOULD BE POSITIVE; RIGHT?

12:25PM 20 A. CORRECT.

12:25PM 21 Q. RIGHT. AND THEN THE FOURTH SCENARIO ON THE LINE THAT

12:25PM 22 WE'RE LOOKING AT IS HIV-1 IS NEGATIVE OR INDETERMINATE AND

12:25PM 23 HIV-2 IS NEGATIVE.

12:25PM 24 DO YOU SEE THAT?

12:25PM 25 A. YES.

12:25PM 1 Q. AND IF WE GO TO YOUR PATIENT RESULTS, BOTH OF YOUR HIV-1  
12:25PM 2 AND HIV-2 AB RESULTS WERE NONREACTIVE; RIGHT?  
12:25PM 3 A. CORRECT.  
12:25PM 4 Q. AND THEN IF WE GO BACK TO THE LEFT-HAND SIDE, THE CDC  
12:26PM 5 PROTOCOL, YOU SEE BELOW THE BOTH NEGATIVE LINE THAT WE WERE  
12:26PM 6 JUST LOOKING AT THAT THERE'S ANOTHER STEP, WHICH IS THE HIV-1  
12:26PM 7 NAT.  
12:26PM 8 DO YOU SEE THAT?  
12:26PM 9 A. YES, AND I DON'T KNOW WHAT THAT IS BECAUSE IT'S NOWHERE --  
12:26PM 10 Q. RIGHT. SO IF WE GO TO THE LEFT-HAND SIDE OF THE SAME BOX,  
12:26PM 11 AT THE VERY BOTTOM DO YOU SEE THERE'S A NOTATION THAT SAYS NAT?  
12:26PM 12 A. OH, GOT IT.  
12:26PM 13 Q. AND WHAT DOES IT SAY AFTER THAT?  
12:26PM 14 A. NUCLEIC ACID TEST, AND SO OF COURSE THAT'S WHAT NAT IS.  
12:26PM 15 Q. RIGHT.  
12:26PM 16 A. SORRY. IT TOOK ME A MOMENT.  
12:26PM 17 Q. NO PROBLEM.  
12:26PM 18 AND THEN AFTER THAT TEST, IF WE GO TO THE RIGHT-HAND SIDE,  
12:26PM 19 HIV-1 NAT -- I'M SORRY, ON THE CDC CHART -- WELL, OKAY, LET'S  
12:26PM 20 GO TO YOUR PATIENT RESULT.  
12:26PM 21 DO YOU SEE THERE'S AN HIV-1 RNA RESULT?  
12:26PM 22 A. YES, I DO.  
12:26PM 23 Q. AND THAT'S NOT DETECTED; RIGHT?  
12:26PM 24 A. CORRECT.  
12:26PM 25 Q. AND YOU UNDERSTAND THAT'S A -- I THINK YOU SAID YOU

12:27PM 1 UNDERSTOOD WHAT RNA WAS?

12:27PM 2 A. YES, I UNDERSTAND WHAT RNA IS.

12:27PM 3 Q. YES. AND THAT'S BASICALLY LIKE A PCR TEST.

12:27PM 4 ARE YOU FAMILIAR WITH THAT TERM?

12:27PM 5 A. PCR? NO, I DON'T BELIEVE SO.

12:27PM 6 Q. OKAY. ARE YOU FAMILIAR WITH COVID PROTOCOLS THAT WE'VE

12:27PM 7 ALL BEEN UNFORTUNATELY GOING THROUGH?

12:27PM 8 A. YES.

12:27PM 9 Q. AND ARE YOU FAMILIAR WITH THE FAST RAPID TEST?

12:27PM 10 A. YES, I AM.

12:27PM 11 Q. AND ARE YOU FAMILIAR WITH THE CONFIRMATORY TEST THAT YOU

12:27PM 12 CAN DO AND WAIT A DAY OR SO FOR?

12:27PM 13 A. YES, YES.

12:27PM 14 Q. AND DO YOU UNDERSTAND THAT THAT CONFIRMATORY TEST IS A PCR

12:27PM 15 OR NUCLEIC ACID TEST?

12:27PM 16 A. NO.

12:27PM 17 Q. YOU DON'T KNOW THAT?

12:27PM 18 A. NO, I DON'T KNOW THAT.

12:27PM 19 Q. OKAY. THAT'S FINE.

12:27PM 20 ANYWAY, YOU SEE THAT, GOING TO THE LEFT-HAND SIDE, THE CDC

12:27PM 21 PROTOCOL, THEN IT HAS AFTER THE HIV-1 NUCLEIC ACID TEST, NAT,

12:27PM 22 THEN IT HAS TWO CHOICES, RIGHT, HIV-1 NAT POSITIVE, OR HIV-1

12:28PM 23 NAT NEGATIVE.

12:28PM 24 AND MR. TIEDEMANN, IF YOU CAN HIGHLIGHT THAT.

12:28PM 25 THOSE ARE THE TWO CHOICES; RIGHT?

12:28PM 1 A. CORRECT.

12:28PM 2 Q. RIGHT.

12:28PM 3 A. YES.

12:28PM 4 Q. AND THEN IF IT'S HIV-1 NAT NEGATIVE, THEN THE FINAL THING

12:28PM 5 THERE IS NEGATIVE FOR HIV-1.

12:28PM 6 DO YOU SEE THAT?

12:28PM 7 A. I DO.

12:28PM 8 Q. OKAY. WOULD YOU EXPECT YOUR DOCTOR TO BE FAMILIAR WITH

12:28PM 9 THE CENTER FOR DISEASE CONTROL PROTOCOL?

12:28PM 10 MR. BOSTIC: OBJECTION. CALLS FOR SPECULATION.

12:28PM 11 401. 403.

12:28PM 12 THE COURT: IT DOES CALL FOR SPECULATION, DOESN'T

12:28PM 13 IT?

12:28PM 14 MR. COOPERSMITH: OKAY. I'LL ASK A DIFFERENT

12:28PM 15 QUESTION, YOUR HONOR.

12:28PM 16 Q. MS. TOMPKINS, DO YOU KNOW IF DR. ASIN IS FAMILIAR WITH THE

12:28PM 17 CDC PROTOCOLS?

12:28PM 18 MR. BOSTIC: 401, 403, YOUR HONOR.

12:28PM 19 THE COURT: UNLESS YOU LAY A FOUNDATION.

12:29PM 20 MR. COOPERSMITH: I'M JUST ASKING HER PERSONAL

12:29PM 21 KNOWLEDGE.

12:29PM 22 THE COURT: RIGHT. UNLESS YOU LAY A FOUNDATION FOR

12:29PM 23 THE 401 OBJECTION.

12:29PM 24 BY MR. COOPERSMITH:

12:29PM 25 Q. SURE. AS FAR AS YOU KNOW, IS DR. ASIN A MEDICAL DOCTOR?

12:29PM 1 A. YES.

12:29PM 2 Q. OKAY. YOU'RE CONFIDENT IN THAT?

12:29PM 3 A. YES.

12:29PM 4 Q. AND DO YOU UNDERSTAND THAT -- WELL, IN FACT, YOU GOT YOUR

12:29PM 5 HIV TEST THROUGH DR. ASIN; RIGHT?

12:29PM 6 A. YES, I DID.

12:29PM 7 Q. AND YOU HAD A CONVERSATION WITH HIM ABOUT THOSE; RIGHT?

12:29PM 8 A. I DID.

12:29PM 9 Q. OKAY. NOW, YOU ALSO SAID ON DIRECT THAT YOU HAD A COUPLE

12:29PM 10 OF CONVERSATIONS WITH PEOPLE AT THERANOS; IS THAT RIGHT?

12:29PM 11 A. I BELIEVE I HAD TWO, AND THEN I DIDN'T REMEMBER THE SECOND

12:29PM 12 ONE INITIALLY, BUT I DO BELIEVE I HAD TWO.

12:29PM 13 Q. THANK YOU.

12:29PM 14 I WANT TO SHOW YOU AN EXHIBIT. IT'S GOING TO BE IN THE

12:29PM 15 BINDER THAT I HANDED YOU, MS. TOMPKINS.

12:29PM 16 A. UH-HUH.

12:29PM 17 Q. AND THAT'S EXHIBIT 14259.

12:30PM 18 A. DID YOU SAY 14?

12:30PM 19 Q. YES. SORRY. IT'S EXHIBIT 14259.

12:30PM 20 A. OH, OKAY.

12:30PM 21 Q. AND DO YOU SEE THAT THIS IS AN EMAIL STRING FROM MAY 12TH

12:30PM 22 OF 2015?

12:30PM 23 A. YES, I DO.

12:30PM 24 Q. AND YOU'RE NOT ON THESE EMAILS; RIGHT?

12:30PM 25 A. NO, I AM NOT.

12:30PM 1 MR. COOPERSMITH: YOUR HONOR, WE OFFER EXHIBIT 14259

12:30PM 2 FOR THE FOLLOWING REASONS: THE BATES NUMBER IS PART OF THE

12:30PM 3 STIPULATION WITH THE GOVERNMENT ON AUTHENTICITY AND WE OFFER IT

12:30PM 4 UNDER THE BUSINESS RECORDS EXCEPTION; 803(6) IN THAT FOUNDATION

12:30PM 5 HAS BEEN PREVIOUSLY LAID FOR EXACTLY THIS TYPE OF INTERNAL

12:31PM 6 EMAIL.

12:31PM 7 IN FACT, WITH THE PREVIOUS WITNESS, WE SAW AN INTERNAL

12:31PM 8 EMAIL LIKE THIS.

12:31PM 9 SO WE WOULD OFFER IT FOR THOSE REASONS.

12:31PM 10 MR. BOSTIC: SO, YOUR HONOR, I WOULD OBJECT UNDER

12:31PM 11 HEARSAY, 801. THERE ARE A COUPLE OF LAYERS OF HEARSAY HERE. I

12:31PM 12 DON'T AGREE THE FOUNDATION HAS BEEN LAID.

12:31PM 13 THE COURT: SO AUTHENTICITY HAS BEEN STIPULATED TO?

12:31PM 14 MR. BOSTIC: CORRECT, YOUR HONOR.

12:31PM 15 THE COURT: RIGHT. SO THE REMAINING BASIS FOR

12:31PM 16 803(6), DID YOU WANT TO GO THROUGH THAT? HOW DO YOU PROPOSE TO

12:31PM 17 DEAL WITH THAT?

12:31PM 18 MR. COOPERSMITH: YES, YOUR HONOR. SO TWO

12:31PM 19 POSSIBILITIES.

12:31PM 20 THIS WITNESS, MS. TOMPKINS, SHE DIDN'T WORK AT THERANOS,

12:31PM 21 SO SHE'S NOT GOING TO HAVE ANY KNOWLEDGE OF THE INTERNAL EMAILS

12:31PM 22 OF THERANOS, RIGHT. I'M CONFIDENT OF THAT.

12:31PM 23 HOWEVER, WE THINK THAT, THROUGH THE PREVIOUS WITNESSES

12:31PM 24 THAT THE COURT HAS SEEN OVER THE COURSE OF THIS TRIAL, OVER AND

12:32PM 25 OVER AGAIN WE HAVE BEEN LAYING FOUNDATION FOR EXACTLY THIS TYPE

12:32PM 1 OF INTERNAL EMAIL DISCUSSING A PATIENT RESULT OR ADDRESSING  
12:32PM 2 OTHER MATTERS WITHIN THE LABORATORY AT THERANOS.  
12:32PM 3 SO WE THINK THAT'S ADEQUATE FOUNDATION UNDER 803(6).  
12:32PM 4 IF FOR ANY REASON YOUR HONOR DOESN'T AGREE WITH THAT, WE  
12:32PM 5 WOULD ALSO OFFER IT FOR A NONHEARSAY PURPOSE, NOTICE TO  
12:32PM 6 MR. BALWANI OF THE MANNER IN WHICH THIS PARTICULAR MATTER WITH  
12:32PM 7 MS. TOMPKINS WAS HANDLED, BECAUSE AS YOU CAN SEE, MR. BALWANI  
12:32PM 8 IS ON THE EMAIL STRING.  
12:32PM 9 THE COURT: MR. BOSTIC.  
12:32PM 10 MR. BOSTIC: IT'S HEARSAY. IT'S NOT JUST THIS  
12:32PM 11 EMAIL. THE EMAIL REFLECTS MULTIPLE CONVERSATIONS, AGAIN,  
12:32PM 12 OUTSIDE OF COURT, INCLUDING BY INDIVIDUALS WHO ARE NOT  
12:32PM 13 WITNESSES IN THIS CASE.  
12:33PM 14 AND AS TO NOTICE, I DON'T THINK THAT MR. BALWANI'S NOTICE  
12:33PM 15 OF THIS SPECIFIC INTERACTION IS RELEVANT UNDER 401.  
12:33PM 16 THE COURT: WELL, I HAD THAT THOUGHT AS WELL.  
12:33PM 17 DO YOU WANT TO REDACT SOME OF THIS? IT SEEMS LIKE THERE'S  
12:33PM 18 MULTIPLE HEARSAY HERE.  
12:33PM 19 IF YOU WANT TO ATTEMPT TO DO THAT, YOU CAN ASK OTHER  
12:33PM 20 QUESTIONS WHILE YOU ATTEMPT TO DO THAT.  
12:33PM 21 MR. COOPERSMITH: YOUR HONOR, I CAN DO THAT.  
12:33PM 22 I WOULD JUST SAY, THOUGH, THAT I THINK WE HAVE SEEN A  
12:33PM 23 PLETHORA OF EXHIBITS WITH THE SAME MULTIPLE HEARSAY. THAT'S  
12:33PM 24 THE ESSENCE OF A BUSINESS RECORD.  
12:33PM 25 AND I THINK THERE'S BEEN, INCLUDING WITH THE PREVIOUS

12:33PM 1 WITNESS, LOTS OF THESE DOCUMENTS THAT REFLECT INTERNAL  
12:33PM 2 CONVERSATIONS.

12:33PM 3 BUT ON THE NOTICE ISSUE, IF I CAN QUICKLY ADDRESS THAT,  
12:33PM 4 EVEN IF WE ENTER IT FOR THAT NONHEARSAY PURPOSE, I THINK THAT  
12:33PM 5 THE NOTICE -- JUST TO BE VERY SPECIFIC, THIS IS THE GOVERNMENT  
12:33PM 6 ARGUING THIS PARTICULAR ISSUE WITH MS. TOMPKINS'S HIV TEST, AND  
12:33PM 7 THIS WOULD BE NOTICE TO MR. BALWANI OF SPECIFICALLY HOW THIS  
12:33PM 8 VERY ISSUE WITH MS. TOMPKINS'S TEST WAS HANDLED AND HOW IT  
12:34PM 9 SHOULD BE HANDLED BASED ON PEOPLE IN THE LAB TELLING HIM WHAT  
12:34PM 10 THEY THOUGHT.

12:34PM 11 SO THAT IS, IN OUR VIEW, CLASSIC NOTICE TO MR. BALWANI.  
12:34PM 12 EVEN IF IT CAN'T COME IN UNDER 801(3)(6), IT WOULD BE FOR THAT  
12:34PM 13 NOTICE PURPOSE.

12:34PM 14 THE COURT: I THINK THERE'S STILL SOME REDACTIONS  
12:34PM 15 THAT NEED TO BE COMPLETED, AND MAYBE THAT LITTLE PARAGRAPH IS  
12:34PM 16 SOMETHING THAT YOU SHOULD LOOK AT.

12:34PM 17 BUT IF YOU CAN ASK ANOTHER QUESTION WHILE YOU LOOK AT  
12:34PM 18 THIS --

12:34PM 19 MR. COOPERSMITH: WELL, YOUR HONOR, IF THE CONCERN  
12:34PM 20 IS THE SECOND EMAIL IN THE STRING, WAS THAT THE COURT'S  
12:34PM 21 CONCERN?

12:34PM 22 THE COURT: FROM MR. FLOREY, IS THAT IT?

12:34PM 23 MR. COOPERSMITH: WELL, OKAY. YOU'RE TALKING ABOUT  
12:34PM 24 THE EMAIL FROM MR. FLOREY?

12:34PM 25 THE COURT: YES.

12:34PM 1 MR. COOPERSMITH: OKAY.

12:34PM 2 IF THE COURT WANTS TO REDACT THAT EMAIL, IT'S NOT MY

12:34PM 3 PREFERENCE, YOUR HONOR. I THINK IT'S ADMISSIBLE FOR THE

12:34PM 4 PURPOSES THAT I GAVE. BUT IF THAT'S THE COURT'S RULING, THEN

12:34PM 5 WE WOULD REDACT THAT EMAIL.

12:35PM 6 THE COURT: IF THAT'S REDACTED, THEN I'LL ADMIT THIS

12:35PM 7 FOR NOTICE ONLY --

12:35PM 8 MR. COOPERSMITH: OKAY.

12:35PM 9 THE COURT: -- NOTICE TO YOUR CLIENT. NOT FOR THE

12:35PM 10 TRUTH OF THE MATTER ASSERTED.

12:35PM 11 MR. COOPERSMITH: OKAY.

12:35PM 12 AND I MIGHT ASK HER A QUESTION, NOT FROM THE DOCUMENT,

12:35PM 13 ABOUT THE MATTERS DISCUSSED IN THAT EMAIL THAT'S GOING TO BE

12:35PM 14 REDACTED.

12:35PM 15 BUT I UNDERSTAND THE DOCUMENT WILL BE ADMITTED WITHOUT

12:35PM 16 THAT PORTION.

12:35PM 17 THE COURT: OKAY.

12:35PM 18 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

12:35PM 19 SO MAY WE PUBLISH THE REDACTED VERSION?

12:35PM 20 THE COURT: YES.

12:35PM 21 MR. COOPERSMITH: AND ARE WE CLEAR ON WHAT IS GOING

12:35PM 22 TO BE REDACTED?

12:35PM 23 (DEFENDANT'S EXHIBIT 14259, REDACTED, WAS RECEIVED IN

12:35PM 24 EVIDENCE.)

12:35PM 25 BY MR. COOPERSMITH:

12:35PM 1 Q. OKAY. NOW CAN YOU SEE THE EXHIBIT ON YOUR SCREEN,

12:35PM 2 MS. TOMPKINS?

12:35PM 3 A. YES, I CAN.

12:35PM 4 Q. SO LET'S GO TO THE VERY BOTTOM EMAIL THAT IS ON YOUR

12:35PM 5 SCREEN. AND THAT'S FROM LAUREN TSUGAWA.

12:36PM 6 DO YOU SEE THAT?

12:36PM 7 A. YES, I SEE IT.

12:36PM 8 Q. AND SHE WRITES, "I JUST SPOKE WITH GUEST," AND YOU CAN

12:36PM 9 JUST MAKE OUT THE E AND THE T.

12:36PM 10 DO YOU SEE THAT?

12:36PM 11 A. YES, I SEE THAT.

12:36PM 12 Q. AND THAT'S YOUR INITIALS, E.T.?

12:36PM 13 A. THOSE ARE MY INITIALS, YES.

12:36PM 14 Q. OKAY. AND THEN IT HAS AN ACC NUMBER.

12:36PM 15 AND IT GOES ON TO SAY, "SHE WANTS A CALL BACK TO EXPLAIN

12:36PM 16 WHY SHE TESTED NON-REACTIVE FOR HIV-1 AND 2, AND NOT DETECTED

12:36PM 17 FOR HIV-1 RNA BUT REACTIVE FOR HIV-1 PLUS 2. SHE SAID SHE

12:36PM 18 ALREADY CALLED DR. ASIN AND HE TOLD HER TO CALL US."

12:36PM 19 DO YOU SEE THAT?

12:36PM 20 A. YES, I DO SEE THAT.

12:36PM 21 Q. SO, IN FACT, YOU DID HAVE THIS INITIAL CONVERSATION WITH A

12:36PM 22 CUSTOMER SERVICE REPRESENTATIVE?

12:36PM 23 A. YES, I DID.

12:36PM 24 Q. AND YOU MAY NOT REMEMBER THE NAME, BUT IT APPEARS THAT'S

12:36PM 25 LAUREN TSUGAWA; IS THAT RIGHT?

12:36PM 1 A. I DON'T REMEMBER THE NAME OF THE PERSON I HAD THAT  
12:36PM 2 CONVERSATION WITH, I'M SORRY.  
12:36PM 3 Q. TOTALLY UNDERSTANDABLE.  
12:36PM 4 NOW, AFTER THAT, THOUGH, AS YOU CAN SEE FROM THIS EMAIL,  
12:37PM 5 IT SAYS YOU WANTED A CALL BACK, AND IN FACT, YOU DID WANT A  
12:37PM 6 CALL BACK; IS THAT RIGHT?  
12:37PM 7 A. YES.  
12:37PM 8 Q. AND THEN YOU HAD ANOTHER CONVERSATION WITH ANOTHER PERSON  
12:37PM 9 THEN AT THERANOS; IS THAT RIGHT?  
12:37PM 10 A. APPARENTLY, YES.  
12:37PM 11 Q. AND YOU CAN'T REMEMBER WHO THAT WAS EITHER; RIGHT?  
12:37PM 12 A. NO. I DON'T REMEMBER THE PERSON'S NAME. I REMEMBER JUST  
12:37PM 13 NOW THAT IT HAPPENED.  
12:37PM 14 Q. OKAY. AND YOU ALSO CAN'T REMEMBER IF THE PERSON WHO YOU  
12:37PM 15 SPOKE TO THE SECOND TIME WAS A MEDICAL PROFESSIONAL OR ANOTHER  
12:37PM 16 CUSTOMER SERVICE REPRESENTATIVE?  
12:37PM 17 A. CORRECT.  
12:37PM 18 Q. OKAY. IF YOU JUST THINK ABOUT THAT CALL AS BEST YOU CAN,  
12:37PM 19 I KNOW IT'S SOME YEARS AGO, DO YOU REMEMBER GOING OVER THE CDC  
12:37PM 20 PROTOCOL WITH THE PERSON ON THE PHONE?  
12:37PM 21 A. I REMEMBER MENTION -- LIKE, I REMEMBER HEARING A MENTION  
12:37PM 22 OF IT. I DON'T KNOW THAT THE TERM "CDC PROTOCOL" WAS ACTUALLY  
12:37PM 23 USED, BUT THE PERSON DID TRY TO EXPLAIN TO ME, LIKE, HOW THE  
12:38PM 24 TEST WORKS ESSENTIALLY.  
12:38PM 25 Q. OKAY. THANK YOU, MS. TOMPKINS.

12:38PM 1 I'M SORRY. WERE YOU FINISHED WITH YOUR ANSWER? I

12:38PM 2 DIDN'T --

12:38PM 3 A. THAT'S THE BEST I CAN RECALL.

12:38PM 4 Q. OKAY. THANK YOU.

12:38PM 5 SO LET'S LOOK AT THE EMAIL ABOVE THE ONE THAT HAS BEEN

12:38PM 6 REDACTED.

12:38PM 7 AND THEN THERE'S AN EMAIL FROM MR. BALWANI. AND HE

12:38PM 8 WRITES, "WE SHOULD POINT TO HER PHYSICIAN. WE SHOULDN'T TRY TO

12:38PM 9 ANSWER THIS QUESTION FOR HER..."

12:38PM 10 DO YOU SEE THAT?

12:38PM 11 A. OH, THAT'S THE ONE FROM MR. BALWANI.

12:38PM 12 Q. YES.

12:38PM 13 A. YES, I SEE THAT.

12:38PM 14 Q. AND YOU ACTUALLY HAD A PHYSICIAN; RIGHT?

12:38PM 15 A. YES, WITH WHOM I HAD ALREADY SPOKEN.

12:38PM 16 Q. RIGHT. THAT'S DR. ASIN?

12:38PM 17 A. YES.

12:38PM 18 Q. AND ABOVE THAT THERE'S AN EMAIL FROM MICAH NIES.

12:38PM 19 DO YOU SEE THAT?

12:38PM 20 A. I'M TRYING TO FIND IT. THERE WE GO, YES.

12:39PM 21 Q. AND THEN THAT'S TO MR. BALWANI AND OTHERS.

12:39PM 22 DO YOU SEE THAT?

12:39PM 23 A. YES, I DO.

12:39PM 24 Q. AND THAT MICAH SAYS, "AGREED. THIS IS REALLY A

12:39PM 25 CONVERSATION BETWEEN HER AND HER PHYSICIAN TO ENSURE THAT SHE

12:39PM 1 IS FULLY INFORMED ABOUT TESTING AND HER OPTIONS."

12:39PM 2 DO YOU SEE THAT?

12:39PM 3 A. YES, I DO.

12:39PM 4 Q. AND THIS SAYS, "THE CLS" -- JUST STOPPING THERE, DO YOU

12:39PM 5 HAVE ANY UNDERSTANDING THAT THAT MEANS CLINICAL LAB SCIENTIST?

12:39PM 6 A. I DO NOW.

12:39PM 7 Q. BECAUSE I JUST TOLD YOU THAT?

12:39PM 8 A. YES.

12:39PM 9 Q. OKAY. AND THEN IT SAYS, "AND/OR DANIEL CAN SUPPORT THE

12:39PM 10 PHYSICIAN TO SUPPORT HIS PATIENT."

12:39PM 11 DO YOU SEE THAT?

12:39PM 12 A. I DO SEE THAT.

12:39PM 13 Q. OKAY. YOU CAN PUT THAT EXHIBIT ASIDE, OR -- YES, WE'LL

12:39PM 14 TAKE IT OFF THE SCREEN.

12:39PM 15 OKAY. THE GOVERNMENT ASKED YOU ABOUT ANOTHER EXHIBIT. I

12:39PM 16 BELIEVE IT WAS 5484.

12:39PM 17 IF YOU CAN FIND THAT --

12:40PM 18 A. I HAVE IT.

12:40PM 19 Q. YOU HAVE THAT? GREAT.

12:40PM 20 EXHIBIT 5484 IS THE TEST THAT YOU HAD IN AUGUST OF 2021;

12:40PM 21 IS THAT RIGHT?

12:40PM 22 A. YES.

12:40PM 23 Q. AND YOU WENT TO GET THIS TEST AT THE CONTRA COSTA HEALTH

12:40PM 24 SERVICES LAB?

12:40PM 25 A. THAT'S CORRECT, YES.

12:40PM 1 Q. AND YOU GOT A RECOMMENDATION TO GO TO THAT LAB BY A  
12:40PM 2 GOVERNMENT FBI AGENT; IS THAT RIGHT?  
12:40PM 3 A. I REQUESTED HELP FINDING A LOCATION TO GET ANOTHER TEST  
12:40PM 4 DONE.  
12:40PM 5 Q. OKAY.  
12:40PM 6 A. I WAS NOT TOLD DO THIS. I ASKED FOR HELP AND SHE AGREED  
12:40PM 7 TO LOOK FOR ME.  
12:40PM 8 Q. RIGHT. AND SHE RECOMMENDED THAT THAT'S ONE OF THE PLACES  
12:40PM 9 YOU COULD GO GET THE TEST?  
12:40PM 10 A. YES.  
12:40PM 11 Q. AND THAT WAS A FEMALE FBI AGENT?  
12:40PM 12 A. YES.  
12:40PM 13 Q. AND THE REASON YOU WANTED TO DO THAT WAS BECAUSE YOU  
12:40PM 14 WANTED TO HAVE ANOTHER PIECE OF EVIDENCE FOR THIS CASE?  
12:40PM 15 A. A RECENT, YEAH, A RECENT TEST.  
12:40PM 16 Q. OKAY. IF YOU LOOK AT THIS, THIS WAS A TEST THAT WAS DONE  
12:40PM 17 WITH A SWAB ON YOUR CHEEK; IS THAT RIGHT?  
12:41PM 18 A. THAT'S CORRECT.  
12:41PM 19 Q. AND IT LOOKS LIKE IT SAYS WHAT THE MECHANISM IS.  
12:41PM 20 DO YOU SEE IN THE FIRST PARAGRAPH AFTER YOUR NAME AND  
12:41PM 21 OTHER INFORMATION, IT SAYS THAT IT WAS PERFORMED USING THE  
12:41PM 22 ALERE DETERMINED HIV RAPID TEST KIT.  
12:41PM 23 DO YOU SEE THAT?  
12:41PM 24 A. I DO SEE THAT.  
12:41PM 25 Q. OKAY. AND THEN IF YOU GO DOWN, DO YOU SEE WHERE IT SAYS

12:41PM 1 NEGATIVE?

12:41PM 2 A. YES.

12:41PM 3 Q. AND THEN IT READS, "EVIDENCE OF HIV ANTIGEN OR ANTIBODY

12:41PM 4 WERE NOT DETECTED."

12:41PM 5 RIGHT?

12:41PM 6 A. YES, I SEE THAT.

12:41PM 7 Q. AND THEN "A NEGATIVE TEST RESULT ONLY REFLECTS THE HIV

12:41PM 8 ANTIGEN/ANTIBODY STATUS ON THE DATE THAT THE SPECIMEN WAS

12:41PM 9 OBTAINED FROM THE ABOVE-NAMED PERSON."

12:41PM 10 DO YOU SEE THAT?

12:41PM 11 A. YES, I DO.

12:41PM 12 Q. AND THAT WOULD HAVE BEEN AUGUST 10TH, 2021?

12:41PM 13 A. THAT'S CORRECT.

12:41PM 14 Q. AND THIS WOULD HAVE BEEN ABOUT SIX YEARS AFTER THE

12:41PM 15 THERANOS TEST; IS THAT RIGHT?

12:41PM 16 A. APPROXIMATELY, YES.

12:42PM 17 Q. OKAY.

12:42PM 18 NOTHING FURTHER, YOUR HONOR.

12:42PM 19 THE COURT: REDIRECT?

12:42PM 20 MR. BOSTIC: BRIEFLY, YOUR HONOR.

12:42PM 21 **REDIRECT EXAMINATION**

12:42PM 22 BY MR. BOSTIC:

12:42PM 23 Q. MS. TOMPKINS, JUST A COUPLE OF FOLLOW-UP QUESTIONS FOR

12:42PM 24 YOU.

12:42PM 25 DO YOU RECALL LOOKING AT EXHIBIT 14259 WITH

12:42PM 1 MR. COOPERSMITH?

12:42PM 2 A. YES, I DO.

12:42PM 3 Q. AND THAT EXHIBIT INDICATES THAT YOU CALLED THERANOS TO TRY

12:42PM 4 TO GET AN EXPLANATION FOR WHY YOU TESTED NONREACTIVE FOR HIV-1

12:42PM 5 AND 2 AND NOT DETECTED FOR HIV-1 RNA, BUT REACTIVE FOR HIV-1

12:42PM 6 PLUS 2.

12:42PM 7 DO YOU REMEMBER THAT?

12:42PM 8 A. YES.

12:42PM 9 Q. AND IS THAT WHY YOU CALLED THERANOS TO TRY TO GET AN

12:42PM 10 EXPLANATION FOR THE RESULTS THAT YOU WERE SEEING?

12:42PM 11 A. THAT'S EXACTLY WHY.

12:42PM 12 Q. AFTER YOUR CONVERSATIONS WITH PEOPLE AT THERANOS, AND

12:42PM 13 AFTER YOUR DISCUSSION WITH MR. COOPERSMITH JUST NOW, AND YOUR

12:42PM 14 REVIEW OF THE CDC MATERIALS, DO YOU HAVE ANY EXPLANATION FOR

12:42PM 15 WHY YOU TESTED REACTIVE FOR HIV-1 AND 2 ANTIBODIES IN MAY OF

12:43PM 16 2015 OTHER THAN THAT TEST NOT BEING ACCURATE?

12:43PM 17 A. NO.

12:43PM 18 MR. BOSTIC: NO FURTHER QUESTIONS. THANK YOU.

12:43PM 19 MR. COOPERSMITH: NOTHING FURTHER, YOUR HONOR.

12:43PM 20 THE COURT: MAY THIS WITNESS BE EXCUSED?

12:43PM 21 MR. COOPERSMITH: YES, YOUR HONOR.

12:43PM 22 MR. LEACH: YES, YOUR HONOR.

12:43PM 23 THE COURT: YOU'RE EXCUSED.

12:43PM 24 THE WITNESS: THANK YOU.

12:43PM 25 THE COURT: YOU'RE WELCOME.

12:43PM 1 THE WITNESS: SHOULD I LEAVE THE BOOKS UP HERE?

12:43PM 2 THE COURT: JUST LEAVE IT HERE AND WE'LL CLEAN IT

12:43PM 3 UP.

12:43PM 4 DO YOU HAVE ANOTHER WITNESS TO CALL?

12:43PM 5 MR. BOSTIC: YES, YOUR HONOR.

12:43PM 6 THE COURT: DO YOU WANT TO HAVE A DISCUSSION BEFORE

12:43PM 7 THE WITNESS TESTIFIES?

12:43PM 8 MR. COOPERSMITH: YES, YOUR HONOR.

12:43PM 9 THE COURT: WELL, THIS IS A GOOD TIME FOR A BREAK.

12:43PM 10 LET'S ALL TAKE A BREAK AND WE'LL BE BACK IN JUST A MOMENT.

12:44PM 11 (JURY OUT AT 12:44 P.M.)

12:44PM 12 THE COURT: ALL RIGHT. PLEASE BE SEATED.

12:44PM 13 THE RECORD SHOULD REFLECT THAT THE JURY HAS LEFT THE

12:44PM 14 COURTROOM. MS. TOMPKINS HAS LEFT THE COURTROOM.

12:44PM 15 ALL COUNSEL AND MR. BALWANI ARE PRESENT.

12:44PM 16 THE NEXT WITNESS, MR. LEACH, IS?

12:44PM 17 MR. LEACH: BRIAN GROSSMAN, YOUR HONOR.

12:44PM 18 THE COURT: ALL RIGHT. THANK YOU.

12:44PM 19 MS. WALSH?

12:44PM 20 MS. WALSH: YES, YOUR HONOR. WE JUST HAD A FEW

12:44PM 21 ISSUES WE WANTED TO RAISE WITH THE COURT.

12:44PM 22 YOUR HONOR, THE GOVERNMENT NOTIFIED US THAT THEY INTEND TO

12:44PM 23 OFFER ANSWERS TO INTERROGATORIES THAT WERE LODGED IN THE CIVIL

12:45PM 24 LITIGATION BROUGHT BY PFM AGAINST THERANOS AND MS. HOLMES AND

12:45PM 25 MR. BALWANI.

12:45PM 1 THERE ARE THREE EXHIBITS IN QUESTION, 5860, 5858, AND  
12:45PM 2 5859. ALL OF THEM WERE FILED OR SIGNED SIX MONTHS AFTER  
12:45PM 3 MR. BALWANI LEFT THERANOS.  
12:45PM 4 THE FIRST SET, 5860, WAS LODGED BY THERANOS, AND THE TWO  
12:45PM 5 OTHERS WERE BY MR. BALWANI INDIVIDUALLY.  
12:45PM 6 SO THESE DOCUMENTS ARE WELL AFTER THE CHARGED CONSPIRACY,  
12:45PM 7 THEY'RE WELL AFTER MR. GROSSMAN'S PFM INVESTMENT IN THE CASE,  
12:45PM 8 THEY'RE WELL AFTER MR. BALWANI LEAVES THERANOS.  
12:46PM 9 I JUST DON'T SEE THE RELEVANCE OF THEM.  
12:46PM 10 AND CERTAINLY AS TO THE THERANOS INTERROGATORY ANSWERS,  
12:46PM 11 MR. BALWANI WAS NOT DIRECTING THERANOS IN ANY WAY TO ANSWER  
12:46PM 12 THOSE INTERROGATORIES. HE WAS LONG GONE AND HAD NO CONTROL  
12:46PM 13 OVER THE ATTORNEYS OR ANYONE ELSE WHO ANSWERED THOSE  
12:46PM 14 INTERROGATORIES.  
12:46PM 15 SO WE WOULD OBJECT TO THEIR ADMISSION ON 401 AND 403 AND,  
12:46PM 16 AS TO THE THERANOS ONES, HEARSAY.  
12:46PM 17 THE COURT: OKAY.  
12:46PM 18 MR. LEACH.  
12:46PM 19 MR. LEACH: YOUR HONOR, EXHIBIT 5858 IS  
12:46PM 20 MR. BALWANI'S SIGNED, SWORN, UNDER OATH ANSWERS TO QUESTIONS IN  
12:46PM 21 A LAWSUIT INVOLVING, I WANT TO SAY THE EXACT SAME BUT I'LL BE  
12:46PM 22 CAREFUL, SUBSTANTIALLY THE SAME ALLEGATIONS THAT ARE AT ISSUE  
12:46PM 23 WITH THIS CASE.  
12:47PM 24 HE'S ASKED QUESTIONS, WHAT DID YOU TELL PFM?  
12:47PM 25 AND HE ANSWERS THEM UNDER OATH.

12:47PM 1 THIS IS THE EQUIVALENT OF TESTIMONY THAT HE GAVE BEFORE  
12:47PM 2 THE S.E.C. OR IN THIS COURT. HE SHOULD BE HELD TO THE ANSWERS.  
12:47PM 3 THESE ARE SWORN ADMISSIONS BY HIM.  
12:47PM 4 I CAN'T EVEN COMPREHEND THE RELEVANCE OR THE 403  
12:47PM 5 OBJECTION.  
12:47PM 6 THE TIMING OF WHEN HE MADE THE ADMISSION IS COMPLETELY  
12:47PM 7 IRRELEVANT.  
12:47PM 8 UNDER THAT LOGIC, THE THINGS THAT HE SAYS UNDER OATH IN  
12:47PM 9 THIS COURTROOM WOULD NOT BE ADMISSIBLE, AND WE KNOW THAT'S NOT  
12:47PM 10 RIGHT.  
12:47PM 11 SO THESE ARE HIS SWORN ANSWERS TO QUESTIONS LITERALLY  
12:47PM 12 ABOUT THE SUBJECT MATTER OF THIS LAWSUIT. I CAN'T COMPREHEND  
12:47PM 13 SOMETHING MORE RELEVANT OR MORE WITHIN THE GOVERNMENT'S PURVIEW  
12:47PM 14 TO OFFER IF IT WANTS.  
12:47PM 15 THAT'S EXHIBIT 5858.  
12:47PM 16 AND MY INTENTION IS NOT TO OFFER THE ENTIRE DOCUMENT, BUT  
12:47PM 17 THERE ARE SPECIFIC QUESTIONS HE'S ASKED, AND I -- AND THESE ARE  
12:48PM 18 INTERROGATORIES, SO I DON'T THINK THERE'S A RULE OF  
12:48PM 19 COMPLETENESS ISSUE HERE. HE'S ASKED A QUESTION, HE'S ABLE TO  
12:48PM 20 CONSULT WITH HIS LAWYERS, AND THEN HE GIVES AN ANSWER UNDER  
12:48PM 21 OATH.  
12:48PM 22 SO --  
12:48PM 23 THE COURT: LET ME ASK YOU, DO YOU INTEND TO LAY A  
12:48PM 24 FOUNDATION FOR THE JURY AS TO WHAT AN INTERROGATORY IS AND THAT  
12:48PM 25 PROTOCOL, THAT PROCEDURE?

12:48PM 1 MR. LEACH: I INTEND TO ASK THIS WITNESS, WHO WAS A  
12:48PM 2 PARTY TO THE LAWSUIT WHO RECEIVED THESE DOCUMENTS AND KNOWS THE  
12:48PM 3 CONTEXT, WAS THERE AN OCCASION WHEN YOU WERE -- WHEN YOU,  
12:48PM 4 THROUGH YOUR LAWYERS, WERE ABLE TO ASK QUESTIONS OF MR. BALWANI  
12:48PM 5 UNDER OATH? DO YOU KNOW WHAT THIS DOCUMENT IS? DO YOU SEE THE  
12:48PM 6 SIGNATURE OF MR. BALWANI?  
12:48PM 7 I DON'T INTEND TO GET INTO THE DETAILS OF THE LAWSUIT. I  
12:48PM 8 DON'T INTEND -- I DON'T NEED TO INTRODUCE THE COVER PAGE.  
12:48PM 9 BUT IT'S THE QUESTION AND THE ANSWER AND THE FACT THAT  
12:48PM 10 IT'S COMING FROM MR. BALWANI THAT I THINK IS FULLY APPROPRIATE  
12:48PM 11 THROUGH A LITIGANT IN THAT LAWSUIT.  
12:48PM 12 THE COURT: AND SO HE WILL BE ABLE TO, TO YOUR  
12:49PM 13 QUESTION, HE'LL BE ABLE TO SAY HE LOOKED AT THIS EITHER WITH OR  
12:49PM 14 WITHOUT COUNSEL, BUT HE'S SEEN IT BEFORE?  
12:49PM 15 MR. LEACH: YES.  
12:49PM 16 THE COURT: OKAY. AND IS IT A -- WHAT ARE WE  
12:49PM 17 TALKING ABOUT? IS IT TWO QUESTIONS? A SENTENCE? A PARAGRAPH?  
12:49PM 18 MR. LEACH: MY CURRENT INTENTION, YOUR HONOR, IS ONE  
12:49PM 19 PAGE. IT'S A QUESTION ABOUT HOW MUCH STOCK MR. BALWANI OWNED.  
12:49PM 20 I HAVEN'T MADE A FINAL DECISION ON THE REMAINDER.  
12:49PM 21 THE EXHIBIT 5858 IS 40 PAGES LONG, BUT I DON'T INTEND TO  
12:49PM 22 INTRODUCE EVERY SINGLE QUESTION AND EVERY SINGLE ANSWER.  
12:49PM 23 SO --  
12:49PM 24 THE COURT: OKAY.  
12:49PM 25 MR. LEACH: MS. WALSH ALSO MENTIONED THERANOS'S

12:49PM 1 RESPONSES TO THE INTERROGATORIES.

12:49PM 2 AND THE REASON THOSE ARE ADMISSIBLE IS IN CERTAIN

12:49PM 3 INTERROGATORY RESPONSES, MR. BALWANI SAYS, UNDER OATH, IN

12:50PM 4 RESPONSE, MR. BALWANI INCORPORATES -- IT SAYS IS, I THINK HE

12:50PM 5 MEANT ITS, "RESPONSE TO INTERROGATORY 14 AS FULLY SET FORTH

12:50PM 6 HERE. HE, UNDER CERTAIN CIRCUMSTANCES, INCORPORATES THERANOS'S

12:50PM 7 ANSWER, BASICALLY SAYING, I'M MAKING THIS A PART OF MY ANSWER.

12:50PM 8 SO I DON'T THINK IT MATTERS WHO SIGNED THERANOS'S

12:50PM 9 INTERROGATORIES, WHEN THEY WERE MADE.

12:50PM 10 MR. BALWANI IS INCORPORATING THAT AS PART OF HIS ANSWER,

12:50PM 11 AND IF I SAY, IN RESPONSE TO A QUESTION HERE, SEE THIS

12:50PM 12 DOCUMENT, I SHOULD -- THAT'S PART OF MY ANSWER.

12:50PM 13 SO THAT'S WHY I THINK IT WOULD BE APPROPRIATE IF THE

12:50PM 14 GOVERNMENT CHOOSES TO INTRODUCE THOSE PORTIONS OF THERANOS'S

12:50PM 15 RESPONSES.

12:50PM 16 THE COURT: SO THESE ARE, THESE ARE -- 5860 IS THE

12:50PM 17 THERANOS'S RESPONSE, THE COMPANY'S RESPONSES TO

12:50PM 18 INTERROGATORIES, AND THERE'S A QUESTION IN HERE, OR EXCUSE ME,

12:50PM 19 AN ANSWER FROM MR. BALWANI IN THAT?

12:50PM 20 MR. LEACH: IN THIS, BOTH THERANOS AND MR. BALWANI

12:50PM 21 ARE ASKED QUESTIONS SEPARATELY.

12:51PM 22 IN HIS ANSWER, MR. BALWANI SAYS, UNDER OATH, I INCORPORATE

12:51PM 23 WHAT THERANOS SAYS IN RESPONSE TO THIS QUESTION.

12:51PM 24 AND IT'S THAT EXPRESS INCORPORATION THAT MAKES IT AN

12:51PM 25 ADOPTED ADMISSION OR AN AUTHORIZED ADMISSION.

12:51PM 1 SO IT'S NOT HEARSAY. IT'S SOMETHING THAT MR. BALWANI IS  
12:51PM 2 SAYING OR ADOPTING UNDER OATH.  
12:51PM 3 THE COURT: I UNDERSTAND.  
12:51PM 4 MR. BALWANI, YOU SEEK TO GET IN WHATEVER HE SAID, I  
12:51PM 5 INCORPORATE NUMBER 14, AND YOU'RE SEEKING TO INTRODUCE  
12:51PM 6 NUMBER 14?  
12:51PM 7 MR. LEACH: YES.  
12:51PM 8 THE COURT: OKAY.  
12:51PM 9 MR. LEACH: I'M USING THAT AS AN EXAMPLE,  
12:51PM 10 YOUR HONOR. I DON'T HAVE THE PARTICULAR ONE HANDY.  
12:51PM 11 THE COURT: RIGHT. OKAY.  
12:51PM 12 MS. WALSH: YOUR HONOR, MAY I BE HEARD?  
12:51PM 13 THE COURT: WHAT ABOUT 59, MR. LEACH?  
12:51PM 14 MR. LEACH: 59 IS ANOTHER RESPONSE BY MR. BALWANI  
12:51PM 15 HIMSELF TO QUESTIONS POSED TO HIM IN THE PFM LITIGATION.  
12:51PM 16 I'VE BEEN UNABLE TO LOCATE MR. BALWANI'S ACTUAL  
12:52PM 17 VERIFICATION FOR THIS DOCUMENT, BUT IT'S SIGNED BY HIS LAWYERS  
12:52PM 18 IN THE COURSE OF VERY SERIOUS LITIGATION, AND I THINK THESE,  
12:52PM 19 THESE ARE MR. BALWANI'S PERSONAL RESPONSES TO QUESTIONS.  
12:52PM 20 IT'S NOT -- DEPENDING ON HOW THE TESTIMONY DEVELOPS, I  
12:52PM 21 DON'T REALLY FORESEE OFFERING ANY PORTION OF 59, BUT IT -- FOR  
12:52PM 22 ALL OF THE REASONS THAT 58 IS ADMISSIBLE, 59 WOULD BE EQUALLY  
12:52PM 23 ADMISSIBLE.  
12:52PM 24 THE COURT: IS THERE AN AGENCY THEORY THAT YOU'RE  
12:52PM 25 SUGGESTING, AND HOW DO YOU -- IN REGARDS TO THE LAWYERS, FOR

12:52PM 1 FOUNDATIONAL PURPOSES, AND HOW DOES THAT GET ESTABLISHED?

12:52PM 2 MR. LEACH: THESE ARE LAWYERS FROM MR. COOPERSMITH'S

12:52PM 3 FORMER LAW FIRM WHO ARE PREPARING THESE INTERROGATORIES. THEY

12:52PM 4 SAY ON THEM, "WE REPRESENT MR. BALWANI."

12:52PM 5 MR. GROSSMAN WAS ALSO --

12:52PM 6 THE COURT: THAT'S MY QUESTION. HOW DO WE KNOW WHO

12:52PM 7 THESE LAWYERS ARE AND THEIR CONNECTION TO MR. BALWANI?

12:52PM 8 MR. LEACH: I MEAN, MR. GROSSMAN WAS ALSO ASKED

12:53PM 9 QUESTIONS BY MR. BALWANI'S LAWYERS IN THIS CASE.

12:53PM 10 I THINK HE CAN SAY WE -- I WANT TO BE CAREFUL, BECAUSE I

12:53PM 11 DON'T WANT TO INJECT GRATUITOUSLY DETAILS OF THAT LAWSUIT FOR

12:53PM 12 OTHER REASONS THAT I THOUGHT THE DEFENDANT WOULD OBJECT TO.

12:53PM 13 BUT MR. GROSSMAN IS FAMILIAR WITH THE LITIGATION. HE

12:53PM 14 KNOWS HE SUED MR. BALWANI. HE KNOWS MR. BALWANI HAS HAD

12:53PM 15 LAWYERS IN THAT CASE. HE KNOWS HE DIRECTED HIS LAWYERS TO

12:53PM 16 PROFOUND QUESTIONS TO MR. BALWANI'S TEAM, AND HE KNOWS HE GOT

12:53PM 17 RESPONSES.

12:53PM 18 AND THE LAWYERS THAT ARE LISTED IN 58 ARE THE SAME LAWYERS

12:53PM 19 WHO ARE LISTED IN 59, OR IN 59.

12:53PM 20 SO I DON'T THINK THERE'S A -- I THINK THE GOVERNMENT HAS

12:53PM 21 SATISFIED ANY FOUNDATION FOR AGENCY.

12:53PM 22 THE COURT: OKAY. THANK YOU.

12:53PM 23 AND IS THE -- WHAT IS THE STATUS OF THAT LITIGATION THAT

12:53PM 24 THESE INTERROGATORIES ARE RELATED TO?

12:53PM 25 MR. LEACH: IT WAS RESOLVED SEVERAL YEARS AGO.

12:53PM 1 THE COURT: OKAY. OKAY.

12:54PM 2 IS THAT IN ANY WAY GOING TO COME UP IN THIS CASE?

12:54PM 3 MR. LEACH: IT IS NOT MY INTENTION TO MAKE -- I WANT

12:54PM 4 TO DO THIS IN AS GENERIC A WAY AS POSSIBLE. IT WAS NOT MY

12:54PM 5 INTENTION TO REFER TO IT AS A LAWSUIT.

12:54PM 6 IT WAS TO DO IT, WAS THERE AN OCCASION WHEN MR. BALWANI

12:54PM 7 PROVIDED SWORN ANSWERS TO QUESTIONS THAT YOU HAD? TO TRY TO DO

12:54PM 8 IT THAT WAY.

12:54PM 9 SO I HAVE NO INTENTION OF GETTING INTO THE SUBSTANCE OF

12:54PM 10 THE LAWSUIT OR THE RESOLUTION OF THAT LAWSUIT.

12:54PM 11 I CAN IMAGINE SCENARIOS WHERE THE DEFENSE OPENS THE DOOR

12:54PM 12 TO WHAT HAPPENED IN THAT LAWSUIT, BUT I, I -- IT'S NOT THE

12:54PM 13 GOVERNMENT'S INTENTION, NOR DID THE GOVERNMENT DO THIS IN THE

12:54PM 14 HOLMES CASE, TO GET INTO THE SUBSTANCE OF THE CASE.

12:54PM 15 THE COURT: OKAY.

12:54PM 16 MS. WALSH.

12:54PM 17 MS. WALSH: THANK YOU, YOUR HONOR.

12:54PM 18 SO I DON'T -- ON THE COPY I HAVE OF 5858, THERE'S NO

12:54PM 19 SIGNATURE BY MR. BALWANI, SO I DON'T SEE WHERE HE SWEARS OR

12:55PM 20 SIGNS ANYTHING, NOR WITH 5859. THEY'RE JUST TYPED NAMES WITH

12:55PM 21 TWO SLASHES AND AN S ABOVE HIS ATTORNEYS' NAMES.

12:55PM 22 SO I DON'T THINK THIS IS A SWORN STATEMENT BY MR. BALWANI,

12:55PM 23 AND I DO THINK A FOUNDATION WOULD HAVE TO BE LAID, A TIGHTER

12:55PM 24 FOUNDATION FROM THE AGENTS SAYING WE WERE ACTING ON

12:55PM 25 MR. BALWANI'S BEHALF IN THIS LAWSUIT.

12:55PM 1 SO THAT GOES TO IS THIS A SWORN STATEMENT BY MR. BALWANI.

12:55PM 2 IN ADDITION, I THINK THERE'S A REAL 403 ISSUE HERE. WE'RE

12:55PM 3 GOING TO IMPORT ALLEGATIONS AND ANSWERS TO INTERROGATORIES FROM

12:55PM 4 A CIVIL LAWSUIT BROUGHT BY THIS WITNESS AND THAT REALLY ARE NOT

12:55PM 5 NECESSARY IN THIS CASE. IT'S GOING TO CAUSE CONFUSION FOR THE

12:56PM 6 JURY, I THINK.

12:56PM 7 THE JURORS, THE JURORS MAY SAY OR THINK, WELL, IF PFM SUED

12:56PM 8 MR. BALWANI, THEN THERE MUST BE SOMETHING THERE, AND THEY'RE

12:56PM 9 GOING TO WONDER WHAT HAPPENED TO THE LAWSUIT, HOW IT WAS

12:56PM 10 RESOLVED, DID MR. GROSSMAN GET HIS MONEY BACK.

12:56PM 11 THERE ARE ALL KINDS OF QUESTIONS THAT THIS IS GOING TO

12:56PM 12 TRIGGER IN THE JURORS' MINDS, AND THEY MAY START SPECULATING

12:56PM 13 ABOUT WHAT THE RESULT OF THAT LAWSUIT WAS.

12:56PM 14 I THINK IT'S TOTALLY INAPPROPRIATE TO BRING THIS EVIDENCE

12:56PM 15 IN FRONT OF THE JURY.

12:56PM 16 THE COURT: ONE OF THOSE THINGS THAT THEY COULD

12:56PM 17 SPECULATE ON WOULD BE THE BIAS OF THE WITNESS AS AGAINST YOUR

12:56PM 18 CLIENT AND THAT THEY SHOULD CONSIDER THAT BIAS WHEN THEY WEIGH

12:56PM 19 THE CREDIBILITY OF THE TESTIMONY.

12:56PM 20 MS. WALSH: SURE. BUT THAT WOULD BE DEFENSE

12:56PM 21 COUNSEL'S CHOICE TO BRING OUT THAT BIAS, AND WEIGHING THOSE TWO

12:56PM 22 THINGS, WE THINK IT'S MORE APPROPRIATE TO KEEP THE

12:56PM 23 INTERROGATORIES OUT OF THE CRIMINAL CASE.

12:56PM 24 THE COURT: OKAY.

12:57PM 25 MR. LEACH: THESE ARE SWORN STATEMENTS UNDER OATH IN

12:57PM 1 A SERIOUS LAWSUIT BROUGHT BY ONE OF THE INVESTORS IN THIS CASE.

12:57PM 2 I'M NOT SURE WHY THE DEFENDANT SHOULD BE EXCUSED FROM HIS

12:57PM 3 OWN WORDS SIMPLY BECAUSE IT CAME UP IN A LAWSUIT, AND I THINK

12:57PM 4 THERE ARE WAYS TO MANAGE THOSE 403 CONCERNS WITHOUT LEADING TO

12:57PM 5 THE PARADE OF HORRIBLES THAT MS. WALSH IS THINKING ABOUT.

12:57PM 6 WITH RESPECT TO THE VERIFICATION, I HAVE A MORE RECENT

12:57PM 7 COPY, WHICH I CAN PROVIDE TO THE DEFENSE, WHICH HAS THE

12:57PM 8 VERIFICATION. MY APOLOGIES WHAT I SENT LAST NIGHT LACKED THAT.

12:57PM 9 BUT THESE ARE HIS SWORN STATEMENTS IN A SUBSTANTIALLY

12:57PM 10 SIMILAR LAWSUIT. I -- WHATEVER CONCERNS THERE ARE ABOUT THE

12:57PM 11 JURY SPECULATING ABOUT WHAT HAPPENED THERE ARE OUTWEIGHED BY

12:57PM 12 THE PROBATIVE NATURE OF HIS SWORN STATEMENTS UNDER OATH.

12:57PM 13 THE COURT: SO, SO WHAT I HEAR YOU SAYING IS THAT

12:57PM 14 YOU DO NOT INTEND TO -- IF THEY'RE ADMITTED, PART OF YOUR

12:57PM 15 FOUNDATION IS NOT TO ASK MR. GROSSMAN ABOUT THE LITIGATION PER

12:58PM 16 SE?

12:58PM 17 MR. LEACH: NOT AT ALL, YOUR HONOR.

12:58PM 18 THE COURT: ISN'T IT A FACT THAT YOU SUED HIM, AND

12:58PM 19 IN RESPONSE TO THAT LAWSUIT, YOU GOT THIS? OR SOMETHING LIKE

12:58PM 20 THAT? YOU'RE NOT GOING TO DO THAT?

12:58PM 21 MR. LEACH: THAT IS NOT THE GOVERNMENT'S INTENT IN

12:58PM 22 THE DIRECT EXAMINATION. WE DID NOT DO THAT IN THE HOLMES CASE.

12:58PM 23 I DO -- YOU KNOW, I COULD IMAGINE A CROSS-EXAMINATION

12:58PM 24 WHERE THEY'RE FAULTING MR. GROSSMAN FOR NOT BRINGING AN ACTION

12:58PM 25 QUICKER.

12:58PM 1 I CAN MANAGE A CROSS-EXAMINATION OF MR. GROSSMAN WHERE  
12:58PM 2 THEY'RE TALKING ABOUT ISSUES IN 2016 OR 2017 WHERE THEY MAY  
12:58PM 3 OPEN THE DOOR TO WHAT HAPPENED IN THAT LAWSUIT OR BIAS, AS THE  
12:58PM 4 GOVERNMENT, OR AS THE COURT HAS SUGGESTED.  
12:58PM 5 BUT I DON'T INTEND TO TALK ABOUT THE FACT THAT THERE WAS A  
12:58PM 6 LAWSUIT OR WHAT THE OUTCOME WAS OR WHAT THE ALLEGATIONS WERE.  
12:58PM 7 I APPRECIATE THE 403 CONCERN THERE.  
12:58PM 8 THE COURT: AND IS THE CONVERSATION IN THE  
12:58PM 9 INTERROGATORIES ABOUT THE CONDUCT THAT OCCURRED WITHIN THE  
12:58PM 10 CHARGED PERIOD IN THE INDICTMENT?  
12:59PM 11 MR. LEACH: YES, YOUR HONOR.  
12:59PM 12 THE COURT: OKAY.  
12:59PM 13 MS. WALSH: YOUR HONOR, IT WOULD BE HELPFUL TO  
12:59PM 14 KNOW -- SO I TAKE IT THE ONLY INTERROGATORY ANSWER THAT HAS A  
12:59PM 15 VERIFICATION IS 5858.  
12:59PM 16 IS THAT CORRECT, MR. LEACH?  
12:59PM 17 MR. LEACH: YES.  
12:59PM 18 MS. WALSH: OKAY. AND IT WOULD BE HELPFUL TO KNOW  
12:59PM 19 WHICH PARAGRAPH THE GOVERNMENT INTENDS TO OFFER, BECAUSE WE MAY  
12:59PM 20 HAVE 106 ADDITIONS TO THOSE WHATEVER PARAGRAPHS.  
12:59PM 21 MR. LEACH: DESCRIBE YOUR OWNERSHIP STAKE IN  
12:59PM 22 THERANOS.  
12:59PM 23 THE COURT: OKAY. LET ME JUST TELL YOU NOW, I  
12:59PM 24 WOULD, OVER YOUR OBJECTION, ALLOW 5860, 5858 TO COME IN. THE  
12:59PM 25 COURT FINDS THAT IF THEY ARE RELATED, AS YOU SUGGEST, TO

12:59PM 1 CONDUCT THAT OCCURRED DURING THE CHARGED PERIOD OF THE  
12:59PM 2 INDICTMENT, THEY ARE STATEMENTS BY THE DEFENDANT IN THIS CASE  
12:59PM 3 THAT RELATE TO THE CONDUCT THAT FALLS WITHIN THE CHARGED PERIOD  
01:00PM 4 OF THE INDICTMENT. THOSE WOULD BE ADMITTED.

01:00PM 5 5859 I'M GOING TO RESERVE ON ABSENT ANOTHER FOUNDATION ON  
01:00PM 6 THAT.

01:00PM 7 AND WHAT I'M GOING TO DO IS GIVE YOU A CHANCE TO MEET AND  
01:00PM 8 CONFER FOR A MOMENT TO SHARE WITH YOU THE PAGES THAT YOU SEEK,  
01:00PM 9 MR. LEACH, TO INTRODUCE. SHOW THAT PAGE, WHATEVER IT IS, AND  
01:00PM 10 TO GIVE MS. WALSH AN OPPORTUNITY TO SUGGEST 106 OR WHATEVER  
01:00PM 11 ELSE YOU WOULD LIKE.

01:00PM 12 MS. WALSH: SURE, YOUR HONOR.

01:00PM 13 AND COULD I JUST GET SOME CLARITY? I JUST WANT TO MAKE  
01:00PM 14 SURE I UNDERSTAND THE COURT'S RULING.

01:00PM 15 5860 IS THE ENTIRETY OF THERANOS'S ANSWERS TO THE  
01:00PM 16 INTERROGATORIES.

01:00PM 17 THE COURT: THAT'S NOT WHAT HE'S -- I THOUGHT  
01:00PM 18 MR. LEACH SAID HE'S GOING TO ASK ONE QUESTION ABOUT THAT THAT  
01:00PM 19 REFERENCES NUMBER 14, "I INCORPORATE MY ANSWERS IN 14," AND  
01:00PM 20 THEN 14'S RESPONSE WOULD COME IN.

01:00PM 21 IS THAT WHAT YOU SAID, MR. LEACH?

01:00PM 22 MR. LEACH: I ONLY OFFERED -- I USED 14 AS AN  
01:00PM 23 EXAMPLE. I DON'T HAVE EXACTLY WHICH ONE IN MIND.

01:01PM 24 BUT IT WOULD ONLY BE UNDER THE CIRCUMSTANCES WHERE  
01:01PM 25 MR. BALWANI IS INCORPORATING THERANOS'S ANSWERS.

01:01PM 1 I WOULDN'T DO IT IN A CIRCUMSTANCE WHERE HE DIDN'T DO  
01:01PM 2 THAT.

01:01PM 3 THE COURT: THE WHOLE DOCUMENT IS NOT COMING IN?

01:01PM 4 MR. LEACH: NO, NO, NO.

01:01PM 5 MS. WALSH: THAT'S WHAT I WONDERED.

01:01PM 6 THE COURT: RIGHT.

01:01PM 7 MS. WALSH: THERE IS ANOTHER DOCUMENT WE WANTED TO  
01:01PM 8 RAISE WITH THE COURT IF THAT'S OKAY.

01:01PM 9 THE COURT: SURE.

01:01PM 10 MS. WALSH: THIS IS EXHIBIT 2984. IT APPEARS TO BE  
01:01PM 11 NOTES THAT MR. GROSSMAN TOOK WHILE WATCHING AN INTERVIEW OF  
01:01PM 12 MS. HOLMES, AND THEY ARE KIND OF BULLET POINTS.

01:01PM 13 I HAVE A COPY, YOUR HONOR. IF I COULD HAND IT UP?

01:01PM 14 THE COURT: SURE.

01:01PM 15 YOU HAVE THIS, MR. LEACH?

01:01PM 16 MR. LEACH: I DO.

01:01PM 17 MS. WALSH: SO IT LOOKS LIKE BULLET POINTS OF WHAT  
01:01PM 18 HE IS HEARING FROM MS. HOLMES DURING THIS INTERVIEW, AND THEN  
01:01PM 19 AT THE BOTTOM THERE ARE TWO PARAGRAPHS DESCRIBING HIS MENTAL  
01:02PM 20 IMPRESSIONS OF HER PERFORMANCE AND HIS SPECULATION AS TO WHY  
01:02PM 21 THE FDA DID A SURPRISE INSPECTION AND MAYBE WHAT THAT HAS TO DO  
01:02PM 22 WITH THERANOS TECHNOLOGY.

01:02PM 23 THE DATE OF THIS IS OCTOBER 21ST, 2015.

01:02PM 24 I THINK ITS PROBATIVE VALUE, GIVEN IT'S HIS IMPRESSIONS OF  
01:02PM 25 WHAT HE'S WATCHING AT THE TIME OF MS. HOLMES, NOT EVEN

01:02PM 1 MR. BALWANI, IT HAS LITTLE PROBATIVE VALUE.

01:02PM 2 THE LAST TWO PARAGRAPHS ARE COMPLETELY SPECULATIVE AND HIS

01:02PM 3 MENTAL IMPRESSIONS OF WHAT IS GOING ON.

01:02PM 4 AND I THINK THAT IN ADDITION, THESE IMPRESSIONS THAT HE'S

01:02PM 5 GIVING DID NOT INFORM HIS INVESTMENT DECISION SINCE HIS

01:02PM 6 INVESTMENT DECISION WAS MADE IN FEBRUARY 2014, MONTHS BEFORE

01:02PM 7 THIS INTERVIEW.

01:02PM 8 SO I THINK IT HAS CLOSE TO NO PROBATIVE VALUE, AND IT IS

01:03PM 9 PREJUDICIAL BECAUSE HE'S GIVING HIS OPINION ABOUT WHAT IS GOING

01:03PM 10 ON DURING HER INTERVIEW.

01:03PM 11 THE COURT: MR. LEACH.

01:03PM 12 MR. LEACH: THANK YOU, YOUR HONOR.

01:03PM 13 THIS IS THE FIRST TIME THAT I'M HEARING OF THE OBJECTIONS

01:03PM 14 TO THIS PARTICULAR DOCUMENT, SO I'LL JUST EXPLAIN WHY I THINK

01:03PM 15 THE GOVERNMENT MIGHT BE USING THIS.

01:03PM 16 IT'S NOT MY INTENT --

01:03PM 17 THE COURT: GO AHEAD. I THINK YOU'RE GOING TO THE

01:03PM 18 QUESTION THAT I WAS GOING TO ASK.

01:03PM 19 MR. LEACH: IT'S NOT MY INTENTION TO OFFER 2894

01:03PM 20 DURING THE DIRECT EXAMINATION.

01:03PM 21 THE COURT: OKAY.

01:03PM 22 MR. LEACH: I MAY CHOOSE TO ASK MR. GROSSMAN

01:03PM 23 QUESTIONS ABOUT OBSERVING THE INTERVIEW.

01:03PM 24 DEPENDING ON WHAT HE'S ABLE -- THAT HE OBSERVED OF

01:03PM 25 MS. HOLMES.

01:03PM 1 DEPENDING ON WHAT HE REMEMBERS OR DOESN'T REMEMBER, I MAY  
01:03PM 2 USE 2804 TO REFRESH HIM.

01:03PM 3 THE REASON HIS OBSERVATIONS OF MS. HOLMES'S STATEMENT IN  
01:03PM 4 OCTOBER 2015 ARE RELEVANT IS BECAUSE IN THE TEXT MESSAGES ON  
01:03PM 5 THE SAME DAY, MS. HOLMES AND MR. BALWANI ARE TEXTING BACK AND  
01:04PM 6 FORTH AND MR. BALWANI WRITES, "WORRIED ABOUT THE COMMENTS YOU  
01:04PM 7 JUST MADE TO 'THE WALL STREET JOURNAL.'"

01:04PM 8 THIS IS RELEVANT, EVEN AFTER THE INVESTMENT DECISION, NOT  
01:04PM 9 FOR MR. GROSSMAN'S STATE OF MIND, BUT TO THE DEFENDANT'S STATE  
01:04PM 10 OF MIND WHEN HE SEES HIS COCONSPIRATOR MAKING A PUBLIC  
01:04PM 11 STATEMENT IN THE FACE OF PUBLIC ALLEGATIONS, AND HE SAYS  
01:04PM 12 ESSENTIALLY, I'M WORRIED ABOUT WHAT YOU JUST SAID.

01:04PM 13 THE COURT: THANK YOU.

01:04PM 14 THAT, THAT, THE TEXT MESSAGES, AND I RECALL THAT TEXT  
01:04PM 15 MESSAGE, FOR PURPOSES OF THE COURT TRYING TO MAINTAIN AND VIEW  
01:04PM 16 WHETHER OR NOT A PRIMA FACIE CASE HAS BEEN SHOWN OF CONSPIRACY  
01:04PM 17 SUCH THAT IT WOULD INVOKE OTHER EVIDENTIARY RULINGS AS TO  
01:04PM 18 ADMISSION OF COCONSPIRATOR STATEMENTS, ET CETERA, THAT  
01:04PM 19 FOUNDATION THAT MR. LEACH SUGGESTS HERE, IF IT WAS -- AND I'M  
01:04PM 20 TAKING YOUR WORD ON IT -- IF IT WAS THE SAME DAY AS THE  
01:05PM 21 INTERVIEW, THAT WOULD SEEM TO SUPPORT AT LEAST A PRIMA FACIE  
01:05PM 22 CONVERSATION THAT MIGHT BE IN FURTHERANCE OF AT THAT TIME,  
01:05PM 23 WHICH WOULD ALLOW FOR -- I'M NOT SUGGESTING THE DOCUMENT COMES  
01:05PM 24 IN, AND I'M, I'M RELIEVED TO HEAR MR. LEACH IS NOT SEEKING TO  
01:05PM 25 INTRODUCE THE DOCUMENT.

01:05PM 1 BUT PROBING QUESTIONS ABOUT MR. GROSSMAN'S OPINIONS ABOUT  
01:05PM 2 WHAT HE OBSERVED FROM THE CODEFENDANT, SEVERED CODEFENDANT HAS  
01:05PM 3 SOME RELEVANCE IN REGARDS TO, AS MR. LEACH SAID, AND I'M HAPPY  
01:05PM 4 TO HEAR YOUR COMMENT ON THIS, AS MR. LEACH SAID, THE TEXTING  
01:05PM 5 THAT WAS CONCURRENT WITH THE INTERVIEW, WHICH SEEMS TO SUGGEST,  
01:05PM 6 AT LEAST PRIMA FACIE, CONSPIRACY.

01:05PM 7 SO I'M HAPPY TO HEAR FROM YOU ON THAT.

01:05PM 8 MS. WALSH: YEAH. SO ON THE TEXTS, I UNDERSTAND  
01:06PM 9 THAT THE TEXTS ARE IN, AND MR. LEACH CAN READ THOSE TEXTS AND  
01:06PM 10 THEY SAY WHAT THEY SAY.

01:06PM 11 BUT JUST BECAUSE MR. BALWANI IS SAYING TO MS. HOLMES, "I'M  
01:06PM 12 CONCERNED ABOUT WHAT YOU'RE SAYING OR WHAT YOU SAID," I DON'T  
01:06PM 13 SEE HOW THAT MAKES MR. GROSSMAN'S SUBJECTIVE OPINIONS ABOUT  
01:06PM 14 WHAT SHE SAID LONG AFTER HE INVESTED RELEVANT AT ALL.

01:06PM 15 I DON'T UNDERSTAND THE CONNECTION AND HOW THE TEXTS  
01:06PM 16 SOMEHOW GIVE MR. GROSSMAN'S SUBJECTIVE IMPRESSIONS RELEVANCE.  
01:06PM 17 THEY'RE COMPLETELY SEPARATE.

01:06PM 18 THE COURT: SO HE STILL HAD HIS INVESTMENT AT THE  
01:06PM 19 TIME OF THE INTERVIEW. THEY HAD INVESTED?

01:06PM 20 MS. WALSH: HE DID STILL HAVE HIS INVESTMENT, YEAH.

01:06PM 21 THE COURT: THEY WERE INVESTORS IN THE COMPANY, SO  
01:06PM 22 THE COMPANY HAD THEIR FUNDS.

01:06PM 23 MS. WALSH: RIGHT. BUT THEY HAD MADE THE INVESTMENT  
01:06PM 24 MANY YEARS BEFORE.

01:06PM 25 AND I DON'T THINK MR. LEACH IS GOING BEYOND THE INVESTMENT

01:06PM 1 AS FAR AS OTHER CONVERSATIONS THAT MR. GROSSMAN AND MR. BALWANI  
01:07PM 2 HAD BECAUSE I THINK THAT THERE'S A RELEVANCE ISSUE WITH THEM.  
01:07PM 3 AND THIS ESPECIALLY IS JUST -- MR. GROSSMAN WATCHING  
01:07PM 4 MS. HOLMES ON T.V. AND GIVING HIS RANDOM IMPRESSIONS ABOUT HER  
01:07PM 5 PERFORMANCE, I JUST DON'T SEE THE PROBATIVE VALUE OF IT.  
01:07PM 6 THE COURT: MR. LEACH.  
01:07PM 7 MR. LEACH: FIRST OF ALL, I AGREE WITH THE DEFENSE  
01:07PM 8 THAT STATEMENTS -- CONVERSATIONS BETWEEN MR. BALWANI AND  
01:07PM 9 MR. GROSSMAN ARE NOT RELEVANT EXCEPT TO THE EXTENT THAT THEY  
01:07PM 10 ILLUMINATE MR. BALWANI'S STATE OF MIND. I THINK HIS STATE OF  
01:07PM 11 MIND THROUGHOUT THE CONSPIRACY IS RELEVANT.  
01:07PM 12 I WANT TO BE CLEAR ABOUT WHAT THE GOVERNMENT INTENDS TO DO  
01:07PM 13 HERE. I DON'T INTEND TO ASK MR. GROSSMAN ABOUT HIS IMPRESSIONS  
01:07PM 14 OF MS. HOLMES OR WHETHER HE THOUGHT SHE WAS CREDIBLE OR WHAT  
01:07PM 15 HIS OVERALL TAKEAWAY WAS.  
01:07PM 16 I INTEND TO ASK, DOES HE REMEMBER WHAT MS. HOLMES SAID?  
01:07PM 17 DOES HE REMEMBER MS. HOLMES SAYING WE NEVER USED COMMERCIALLY  
01:07PM 18 BASED LAB EQUIPMENT FOR FINGERSTICK SAMPLES?  
01:08PM 19 AND THEN IN CLOSING ARGUMENT WE CAN COMPARE THIS WITNESS'S  
01:08PM 20 MEMORY OF WHAT MS. HOLMES SAID IS AGAINST THE TEXT MESSAGE AND  
01:08PM 21 SEE MR. BALWANI'S REACTION TO THAT.  
01:08PM 22 IT'S NO GREATER THAN THAT. I DON'T INTEND TO GET INTO  
01:08PM 23 MENTAL IMPRESSIONS OR THOUGHTS ABOUT CREDIBILITY OR ANYTHING  
01:08PM 24 REFLECTED IN THAT NOTE.  
01:08PM 25 IT'S REALLY, DID YOU OBSERVE MS. HOLMES SAY X?

01:08PM 1 YES.

01:08PM 2 AND WE KNOW FROM THE TEXT MESSAGES THAT THAT CAUSED

01:08PM 3 MR. BALWANI SOME HEARTBURN.

01:08PM 4 AND THAT'S CLEARLY RELEVANT TO HIS STATE OF MIND AND THE

01:08PM 5 EXISTENCE OF A CONSPIRACY.

01:08PM 6 MS. WALSH: BUT, YOUR HONOR, WE ALREADY KNOW FROM

01:08PM 7 THE TEXT MESSAGES THAT IT MAY HAVE CAUSED HEARTBURN.

01:08PM 8 WE DON'T NEED MR. GROSSMAN'S GLOSS -- HIS OWN PERSONAL

01:08PM 9 GLOSS THAT WAS NEVER COMMUNICATED TO MR. BALWANI, BY THE WAY --

01:08PM 10 BASED ON HIS OWN THOUGHTS AS TO WHAT MS. HOLMES SAID.

01:08PM 11 I DON'T SEE HOW THERE'S REAL PROBATIVE VALUE IN HIM

01:08PM 12 TESTIFYING TO THAT.

01:09PM 13 THE COURT: OKAY. AS FAR AS THE TIME CONSUMPTION

01:09PM 14 UNDER 403 ANALYSIS, WHAT IS THAT GOING TO BE, MR. LEACH?

01:09PM 15 MR. LEACH: I DON'T FORESEE THIS TAKING MORE THAN

01:09PM 16 FIVE MINUTES OF EXAMINATION, YOUR HONOR.

01:09PM 17 AND HONESTLY, I'M, I'M STILL WEIGHING WHETHER WE WILL BE

01:09PM 18 GETTING INTO THIS PERIOD AT ALL. BUT IF IT TAKES UP ANY

01:09PM 19 PORTION OF THE DIRECT, IT WILL BE LESS THAN FIVE MINUTES.

01:09PM 20 THE COURT: IT WILL CERTAINLY BE LESS THAN THE TIME

01:09PM 21 THAT WE HAVE SPENT DISCUSSING IT.

01:09PM 22 MR. LEACH: YES.

01:09PM 23 THE COURT: OKAY.

01:09PM 24 MS. WALSH: IF I COULD INQUIRE, YOUR HONOR, IN

01:09PM 25 ADDITION, IF MR. LEACH HAS SOME ESTIMATE ON HIS DIRECT? THAT

01:09PM 1 MIGHT BE HELPFUL IN PLANNING.

01:09PM 2 THE COURT: ANY IDEA ON THAT, MR. LEACH?

01:09PM 3 MR. LEACH: AS THE COURT MAY TELL FROM SOME OF MY

01:09PM 4 RESPONSES TO THE QUESTIONS, I'M NOT EXACTLY SURE. I THINK IN

01:09PM 5 THE HOLMES CASE IT WAS ABOUT TWO AND A HALF HOURS, AND MY GOAL

01:09PM 6 IS TO COME IN SOONER ON THAT.

01:09PM 7 THE COURT: OKAY.

01:09PM 8 MR. LEACH: SO TWO HOURS IS WHAT I CAN GUESS.

01:10PM 9 THE COURT: OKAY.

01:10PM 10 MS. WALSH: OKAY. THANK YOU.

01:10PM 11 THE COURT: YOU SHOULD PROBABLY GET AN ANSWER FROM

01:10PM 12 ME ABOUT THIS.

01:10PM 13 MS. WALSH: YES, YES.

01:10PM 14 (DISCUSSION AMONGST DEFENSE COUNSEL OFF THE RECORD.)

01:10PM 15 MS. WALSH: YES, YOUR HONOR.

01:10PM 16 THE COURT: SO I WILL PERMIT -- FIRST OF ALL, I'M

01:10PM 17 NOT GOING TO ALLOW 2894 TO BE ADMITTED INTO EVIDENCE.

01:10PM 18 BUT I WILL PERMIT YOU, MR. LEACH, TO ASK QUESTIONS OF THE

01:10PM 19 WITNESS, DID MS. HOLMES SAY X?

01:10PM 20 BUT NOT TO DRAW UPON HIS OPINION AS TO CREDIBILITY OR ANY

01:10PM 21 OF THOSE THINGS, HOW IS SHE DOING, OR TO RATE HER PERFORMANCE

01:10PM 22 OR ANYTHING LIKE THAT. DID YOU BELIEVE HER? THAT'S NOT

01:10PM 23 RELEVANT.

01:10PM 24 BUT WHAT WOULD BE AND COULD BE RELEVANT IS HIS ABILITY TO

01:10PM 25 RECALL WHAT SHE SAID REGARDING, HER REPRESENTATIONS REGARDING

01:10PM 1 THE COMPANY.

01:11PM 2 AND AS WE HAVE SAID, THE CONNECTION TO MR. BALWANI IS THE

01:11PM 3 TEXT MESSAGE. IN THIS CASE IT SEEMS LIKE IT WAS ON THE SAME

01:11PM 4 DATE OF THE ARTICLE.

01:11PM 5 SO I'LL PERMIT THAT TO COME IN.

01:11PM 6 IF IT BECOMES CUMULATIVE, IF IT GOES TOO FAR, I'LL

01:11PM 7 CERTAINLY HEAR FROM THE PARTIES ABOUT THAT.

01:11PM 8 OKAY. THERE WAS ANOTHER THING?

01:11PM 9 MS. WALSH: THERE WAS. THIS RELATES TO SCHEDULING.

01:11PM 10 THE COURT: YES.

01:11PM 11 MS. WALSH: SO I KNOW THAT THE GOVERNMENT'S MOTION

01:11PM 12 RELATED TO THE LIS IS FOR FRIDAY MORNING.

01:11PM 13 THE COURT: YES.

01:11PM 14 MS. WALSH: AND WE WANT TO REQUEST THAT THAT BE

01:11PM 15 PUSHED TO MONDAY. WE DON'T ANTICIPATE CALLING THE EXPERT THAT

01:11PM 16 WOULD BE THE SUBJECT OF THAT MOTION. WE WOULD LIKE A LITTLE

01:11PM 17 MORE TIME TO DIGEST WHAT THE GOVERNMENT SAID AND RESPOND TO IT,

01:11PM 18 AND WE CAN BE PREPARED TO ADDRESS IT ON MONDAY MORNING.

01:11PM 19 THE COURT: I'M SORRY, YOU DON'T INTEND TO CALL?

01:11PM 20 MS. WALSH: RICHARD SONNIER.

01:12PM 21 THE COURT: IN YOUR DEFENSE?

01:12PM 22 MS. WALSH: NO, ON FRIDAY. FRIDAY. I WAS UNCLEAR.

01:12PM 23 THE COURT: THANK YOU.

01:12PM 24 MS. WALSH: WE HAD ORIGINALLY INDICATED THAT WE

01:12PM 25 MIGHT, AND WE DO NOT INTEND TO DO THAT.

01:12PM 1 THE COURT: OKAY.

01:12PM 2 MS. WALSH: SO IT DOESN'T NEED TO BE DECIDED BEFORE

01:12PM 3 FRIDAY.

01:12PM 4 AND IF THE GOVERNMENT RESTS, WE WILL HAVE AT LEAST TWO

01:12PM 5 WITNESSES THAT WE -- I MEAN, WE HAVEN'T DECIDED FINALLY --

01:12PM 6 THE COURT: SURE.

01:12PM 7 MS. WALSH: -- BUT THAT WE ARE CONTEMPLATING, SO WE

01:12PM 8 CAN BE PREPARED TO GO ON THAT.

01:12PM 9 THE COURT: THANK YOU.

01:12PM 10 WELL, I'D LIKE TO KEEP IT AT 8:30 ON FRIDAY. I KNOW WE

01:12PM 11 HAD YESTERDAY A FULL DAY TO -- I'M SURE WE ALL BENEFITTED FROM

01:12PM 12 THE BREAK. AND I THINK MR. COOPERSMITH WANTED -- RATHER THAN

01:12PM 13 PRESS ON, WE TOOK A BREAK AND WAITED FOR THE HEALTH OF THE

01:12PM 14 JUROR TO IMPROVE, WHICH IT HAD. I'M GLAD HE'S BACK WITH US

01:12PM 15 TODAY.

01:12PM 16 BUT I'D LIKE TO KEEP US ON SCHEDULE FOR THE 8:30 FOR THAT,

01:12PM 17 AT LEAST OUR INITIAL HEARING. HOPEFULLY WE CAN RESOLVE IT

01:13PM 18 THEN.

01:13PM 19 IF NOT, WE CERTAINLY CAN BEGIN THE DISCUSSION.

01:13PM 20 MS. WALSH: SURE.

01:13PM 21 THE COURT: ALL RIGHT.

01:13PM 22 MS. WALSH: ALL RIGHT.

01:13PM 23 THE COURT: LET'S TAKE ABOUT FIVE MINUTES AND WE'LL

01:13PM 24 COME BACK AND MR. GROSSMAN WILL BE HERE.

01:13PM 25 MR. LEACH: OKAY.

01:13PM 1 (RECESS FROM 1:13 P.M. UNTIL 1:23 P.M.)

01:23PM 2 THE COURT: ALL RIGHT. THANK YOU FOR YOUR PATIENCE,

01:23PM 3 LADIES AND GENTLEMEN.

01:23PM 4 WE'RE BACK ON THE RECORD. ALL PARTIES PREVIOUSLY PRESENT

01:23PM 5 ARE PRESENT ONCE AGAIN.

01:24PM 6 MR. LEACH.

01:24PM 7 MR. LEACH: THANK YOU, YOUR HONOR.

01:24PM 8 THE UNITED STATES CALLS BRIAN GROSSMAN.

01:24PM 9 THE COURT: SIR, IF YOU WOULD COME HERE AND FACE OUR

01:24PM 10 COURTROOM DEPUTY AND RAISE YOUR RIGHT HAND, SHE HAS A QUESTION

01:24PM 11 FOR YOU.

01:24PM 12 (**GOVERNMENT'S WITNESS, BRIAN GROSSMAN, WAS SWORN.**)

01:24PM 13 THE WITNESS: I DO.

01:24PM 14 THE COURT: PLEASE HAVE A SEAT UP HERE, SIR. MAKE

01:24PM 15 YOURSELF COMFORTABLE.

01:24PM 16 FEEL FREE TO ADJUST THE CHAIR AND THE MICROPHONE AS YOU

01:24PM 17 NEED.

01:24PM 18 WHEN YOU ARE COMFORTABLE, WOULD YOU PLEASE STATE YOUR NAME

01:24PM 19 AND THEN SPELL IT, PLEASE.

01:24PM 20 THE WITNESS: DO I NEED TO KEEP MY MASK ON?

01:24PM 21 THE COURT: ARE YOU FULLY VACCINATED?

01:24PM 22 THE WITNESS: YES. THAT'S OKAY.

01:24PM 23 THE COURT: NO, GO AHEAD AND TAKE IT OFF. THAT'S

01:24PM 24 FINE.

01:25PM 25 THE WITNESS: BRIAN GROSSMAN. B-R-I-A-N,

01:25PM 1 G-R-O-S-S-M-A-N.

01:25PM 2 THE COURT: COUNSEL.

01:25PM 3 MR. LEACH: THANK YOU, YOUR HONOR.

01:25PM 4 **DIRECT EXAMINATION**

01:25PM 5 BY MR. LEACH:

01:25PM 6 Q. GOOD AFTERNOON, MR. GROSSMAN.

01:25PM 7 A. GOOD AFTERNOON.

01:25PM 8 Q. WHERE DO YOU WORK?

01:25PM 9 A. I WORK FOR A FIRM CALLED PFM HEALTH SCIENCES.

01:25PM 10 Q. AND WHAT IS PFM HEALTH SCIENCES?

01:25PM 11 A. WE ARE AN S.E.C. REGISTERED INVESTMENT ADVISOR.

01:25PM 12 WE HAVE THREE DIFFERENT FUNDS. WE HAVE A HEDGE FUND; WE

01:25PM 13 HAVE A LONG ONLY FUND; AND WE HAVE A PRIVATE, A FUND INVESTING

01:25PM 14 IN PRIVATE COMPANIES.

01:25PM 15 Q. AND WHEN YOU SAY S.E.C. REGISTERED INVESTMENT ADVISOR,

01:25PM 16 S.E.C. IS THE U.S. SECURITIES AND EXCHANGE COMMISSION?

01:25PM 17 A. YES.

01:25PM 18 Q. THAT'S THE GOVERNMENT AGENCY THAT REGULATES SECURITIES?

01:26PM 19 A. THAT'S CORRECT.

01:26PM 20 Q. OKAY. AND WHAT IS A REGISTERED INVESTMENT ADVISOR?

01:26PM 21 A. WE, AS PART OF -- I'M NOT A LEGAL EXPERT ON THE PROCESS,

01:26PM 22 BUT OVER A CERTAIN ASSET SIZE, YOU'RE REQUIRED TO COMPLY WITH

01:26PM 23 S.E.C. REGULATIONS, FILE QUARTERLY STATEMENTS OF OWNERSHIP,

01:26PM 24 SECURITIES THAT YOU OWN, AND AS PART OF THAT, YOU'RE AUDITED BY

01:26PM 25 THE S.E.C. FROM TIME TO TIME, AND THEY GO THROUGH YOUR BOOKS

01:26PM 1 AND RECORDS.

01:26PM 2 AND SO WE HAVE BEEN AN S.E.C. REGISTERED INVESTMENT

01:26PM 3 ADVISOR I THINK SINCE THE MIDDLE OF THE LAST DECADE. SO 2005

01:26PM 4 OR '06, SOMEWHERE IN THAT.

01:26PM 5 Q. AND THE ADVISOR YOU WORK FOR IS PARTNERSHIP FUND

01:26PM 6 MANAGEMENT?

01:26PM 7 A. YEAH, PFM HEALTH SCIENCES.

01:26PM 8 Q. AND WHAT DO YOU DO FOR PFM HEALTH SCIENCES?

01:26PM 9 A. I'M THE MANAGING PARTNER. I ALSO AM THE PORTFOLIO MANAGER

01:26PM 10 FOR ALL OF THE FUNDS.

01:26PM 11 Q. IN OR ABOUT FEBRUARY OF 2014, DID PFM INVEST IN A COMPANY

01:27PM 12 CALLED THERANOS?

01:27PM 13 A. YES.

01:27PM 14 Q. I HAVE SOME QUESTIONS ABOUT THAT, BUT FIRST LET ME ASK YOU

01:27PM 15 TO PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.

01:27PM 16 A. MY -- I WENT -- I WENT -- I ATTENDED COLLEGE IN THE

01:27PM 17 UNIVERSITY OF PENNSYLVANIA. I GRADUATED IN 1996 WITH A DEGREE,

01:27PM 18 WITH A DEGREE -- A BACHELOR OF SCIENCE IN ECONOMICS.

01:27PM 19 FROM THERE I STARTED WORKING ORIGINALY AT JP MORGAN. I

01:27PM 20 WORKED AT JP MORGAN ASSET MANAGEMENT FOR FIVE YEARS, FROM 1996

01:27PM 21 UNTIL 2001.

01:27PM 22 IN 2001 I LEFT JP MORGAN FOR A FIRM CALLED PEQUOT. IT WAS

01:27PM 23 ACTUALLY A HEDGE FUND.

01:27PM 24 AND THEN PEQUOT, WITHIN A FEW MONTHS, SPLIT INTO TWO

01:27PM 25 FIRMS.

01:27PM 1 I LEFT PEQUOT AS PART OF THE GROUP THAT STARTED ANOTHER  
01:28PM 2 FIRM CALLED ANDOR CAPITAL. I WAS AT ANDOR CAPITAL FROM '01 TO  
01:28PM 3 2004.  
01:28PM 4 AND THEN SINCE 2004 I'VE BEEN AT PARTNERSHIP FUND  
01:28PM 5 MANAGEMENT, OR PFM HEALTH SCIENCES AS WE NOW CALL IT.  
01:28PM 6 Q. SO YOU'VE BEEN AT PFM SINCE APPROXIMATELY 2004?  
01:28PM 7 A. THAT'S CORRECT.  
01:28PM 8 Q. OKAY. SO ROUGHLY 18 YEARS?  
01:28PM 9 A. YES.  
01:28PM 10 Q. CAN YOU GIVE US A SENSE AT A HIGH LEVEL OF WHO SOME OF  
01:28PM 11 PFM'S INVESTORS ARE?  
01:28PM 12 A. WE HAVE A VARIETY OF INVESTORS FROM INDIVIDUALS ALL OF THE  
01:28PM 13 WAY UP TO LARGE, WELL, HIGH NET WORTH INVESTORS. WE HAVE  
01:28PM 14 INDIVIDUALS; WE HAVE CORPORATE PENSION PLANS; WE HAVE SOVEREIGN  
01:28PM 15 GOVERNMENT PENSION PROGRAMS; AND WE HAVE STATE PENSION  
01:28PM 16 PROGRAMS, ALL AS INVESTORS IN PFM.  
01:29PM 17 Q. SO STATE PENSION PROGRAMS, WHAT ARE THOSE?  
01:29PM 18 A. THOSE WOULD BE LIKE THE STATE OF CALIFORNIA, THE STATE OF  
01:29PM 19 TEXAS, THE STATE OF UTAH THAT TAKE THEIR EMPLOYEE RETIREMENT  
01:29PM 20 ASSETS AND HIRE DIFFERENT MANAGERS TO INVEST PART OF THAT --  
01:29PM 21 PART OF THOSE RETIREMENT SAVINGS.  
01:29PM 22 AND SO WE, WE HAVE -- WE -- OVER THE YEARS WE'VE HAD  
01:29PM 23 RELATIONSHIPS WITH A NUMBER OF DIFFERENT STATES AS PART OF A --  
01:29PM 24 WE WOULD BE ONE OF THEIR EXTERNAL INVESTMENT MANAGERS IS HOW  
01:29PM 25 THEY WOULD DESCRIBE IT.

01:29PM 1 Q. AND DID I HEAR YOU SAY YOU ALSO INVEST MONEY ON BEHALF OF  
01:29PM 2 CORPORATE PENSION FUNDS?

01:29PM 3 A. WE HAVE -- YEAH, WE HAVE CORPORATE PENSION PLANS; WE HAVE  
01:29PM 4 HIGH NET WORTH INDIVIDUALS; WE HAVE FIRMS THAT REPRESENT A  
01:29PM 5 SERIES OF HIGH NET WORTH FAMILIES, WHAT WE WOULD CALL  
01:29PM 6 MULTI-FAMILY OFFICES; AND THEN OUR OWN EMPLOYEES ACTUALLY MAKE  
01:30PM 7 UP A FAIR -- A SIGNIFICANT PART OF THE CAPITAL THAT WE INVEST.

01:30PM 8 Q. AND YOU HAVE A HAND IN INVESTING ON BEHALF OF PFM?

01:30PM 9 A. YES.

01:30PM 10 Q. AND WHAT IS YOUR ROLE?

01:30PM 11 A. MY ROLE IS, AS I SAID BEFORE, THE PORTFOLIO MANAGER. I'M  
01:30PM 12 THE FINAL DECISION IN TERMS OF WHAT GOES INTO THE FUND, WHAT  
01:30PM 13 GOES OUT OF THE FUND.

01:30PM 14 WE HAVE A COLLABORATIVE INVESTMENT PROCESS, SO WE HAVE  
01:30PM 15 SENIOR AND JUNIOR INVESTMENT PROFESSIONALS THAT ARE INVOLVED IN  
01:30PM 16 BOTH THE RESEARCH AND THEN ULTIMATELY HELP ADVISE DECISION  
01:30PM 17 MAKING, INVESTMENT DECISIONS.

01:30PM 18 BUT AT THE END OF THE DAY, I'M THE FINAL DECISION-MAKER  
01:30PM 19 FOR THE PORTFOLIO.

01:30PM 20 AND I'M ALSO IN CHARGE OF RISK MANAGEMENT, MANAGING THE  
01:30PM 21 FUND. YOU KNOW, WHEN MARKET ENVIRONMENTS AREN'T AS -- OR CAN  
01:30PM 22 BE A LITTLE TURBULENT, LIKE RIGHT NOW.

01:30PM 23 SO THOSE WOULD BE MY RESPONSIBILITIES.

01:31PM 24 I ALSO MANAGE THE FIRM, ALTHOUGH I HAVE A REALLY GOOD TEAM  
01:31PM 25 THAT DOES MOST OF THE DAY-TO-DAY, MANAGES THE DAY-TO-DAY

01:31PM 1 OPERATIONS OF OUR INVESTMENT BUSINESS -- OR OF THE  
01:31PM 2 NONINVESTMENT PART OF OUR FIRM.  
01:31PM 3 SO I ALSO HAVE THOSE RESPONSIBILITIES, WHICH I DELEGATE  
01:31PM 4 THE MAJORITY OF THAT.  
01:31PM 5 Q. DOES PFM INVEST IN PUBLIC COMPANIES OR PRIVATE COMPANIES  
01:31PM 6 OR SOME COMBINATION OF BOTH?  
01:31PM 7 A. WE INVEST IN BOTH.  
01:31PM 8 Q. OKAY. AND HOW DO YOU GO ABOUT DOING THAT?  
01:31PM 9 A. WE HAVE A PROCESS FOR -- A RESEARCH PROCESS, AN INVESTMENT  
01:31PM 10 PROCESS THAT WE HAVE DEVELOPED OVER THE LAST, YOU KNOW, TWO  
01:31PM 11 DECADES GOING BACK TO EVEN THE PEQUOT PERIOD.  
01:31PM 12 AND IT'S REALLY AROUND UNDERSTANDING THE FUNDAMENTAL  
01:31PM 13 QUALITATIVE INSIGHTS AROUND A COMPANY, A PRODUCT, A TECHNOLOGY  
01:31PM 14 AND HOW THAT'S LIKELY TO IMPACT SOME TYPE OF MARKET. MAYBE  
01:32PM 15 IT'S FOR A DRUG, MAYBE IT'S FOR A NEW MEDICAL DEVICE, MAYBE  
01:32PM 16 IT'S A NEW PIECE OF SOFTWARE FOR HOSPITALS.  
01:32PM 17 WE THEN SPEND A LOT OF EFFORT TO TRANSLATE THOSE INSIGHTS  
01:32PM 18 INTO AN ACTUAL FORECAST FOR THE BUSINESS, INCLUDING INCOME  
01:32PM 19 STATEMENT, BALANCE SHEET, CASH FLOWS.  
01:32PM 20 AND THEN WE TRY TO -- WE TRY TO, IN THAT TRANSLATION  
01:32PM 21 PROCESS, WHEN WE QUANTIFY OUR INVESTMENT, WE TRY TO -- WE'RE  
01:32PM 22 LOOKING FOR A VIEW OF THE BUSINESS THAT IS DIFFERENT, IN OTHER  
01:32PM 23 WORDS, IT'S GOING TO GROW FASTER AND IT'S GOING TO BE MORE  
01:32PM 24 PROFITABLE.  
01:32PM 25 AND OFTENTIMES WE'LL LOOK OUT OVER MANY YEARS, 5, 10,

01:32PM 1 15 YEARS INTO THE FUTURE WHEN WE, WHEN WE DO THAT TYPE OF  
01:32PM 2 ANALYSIS.

01:32PM 3 AND SO THAT'S, THAT'S OUR PROCESS.

01:32PM 4 AND WE INVEST IN THE HEALTH CARE SECTOR, ACROSS ALL OF THE  
01:32PM 5 HEALTH CARE SECTOR, AND WE HAVE A TEAM OF PEOPLE THAT  
01:32PM 6 SPECIALIZE IN DIFFERENT PARTS OF HEALTH CARE.

01:33PM 7 Q. LET ME PLEASE DIRECT YOUR ATTENTION, MR. GROSSMAN, TO THE  
01:33PM 8 TIME PERIOD DECEMBER OF 2013.

01:33PM 9 DO YOU HAVE THAT TIME PERIOD IN MIND?

01:33PM 10 A. YES.

01:33PM 11 Q. IN OR AROUND THAT TIME PERIOD, DID YOU MEET WITH  
01:33PM 12 INDIVIDUALS FROM THERANOS ABOUT A POSSIBLE INVESTMENT IN THE  
01:33PM 13 COMPANY?

01:33PM 14 A. YES.

01:33PM 15 Q. WHO DID YOU MEET WITH?

01:33PM 16 A. WE MET WITH, WE MET WITH MS. HOLMES AND MR. BALWANI.

01:33PM 17 Q. OKAY. AND WHEN YOU SAY "WE," WHO ARE YOU TALKING ABOUT?

01:33PM 18 A. IT WAS MYSELF AND MY PARTNER AT THE TIME WHOSE NAME WAS  
01:33PM 19 CHRISTOPHER JAMES. THE TWO OF US MET WITH MR. BALWANI AND  
01:33PM 20 MS. HOLMES.

01:33PM 21 Q. WHERE DID YOU MEET WITH MS. HOLMES AND MR. BALWANI?

01:33PM 22 A. WE MET IN THEIR OFFICES IN PALO ALTO. I THINK IT WAS  
01:33PM 23 CALIFORNIA AVENUE. AND, YEAH, THAT'S WHERE THE MEETING WAS.

01:33PM 24 Q. HOW DID THIS OPPORTUNITY COME ABOUT?

01:33PM 25 A. MY -- I DON'T -- I BELIEVE MY PARTNER HEARD ABOUT THE

01:34PM 1 COMPANY FROM ONE OF HIS FRIENDS OR ONE OF HIS INVESTMENTS, ONE  
01:34PM 2 OF HIS FRIENDS IN THE INVESTMENT BUSINESS, AND AS A HEALTH CARE  
01:34PM 3 FUND, OR SINCE OUR FIRM HAS A HEALTH CARE EXPERTISE, I THINK MY  
01:34PM 4 PARTNER WAS ASKED IF HE KNEW ABOUT THE COMPANY.  
01:34PM 5 AND THAT'S KIND OF WHEN IT FIRST SHOWED UP. THAT'S THE  
01:34PM 6 FIRST TIME I REMEMBER HEARING ABOUT THE COMPANY.  
01:34PM 7 Q. AND YOU MET WITH MR. BALWANI AND MS. HOLMES AT SOME POINT  
01:34PM 8 IN DECEMBER OF 2013?  
01:34PM 9 A. YES.  
01:34PM 10 Q. OKAY. TELL US ABOUT THAT MEETING. WHAT HAPPENED?  
01:34PM 11 A. WELL, WE -- WE DROVE, WE DROVE DOWN FROM SAN FRANCISCO TO  
01:34PM 12 MEET WITH THEM.  
01:34PM 13 WE REALLY -- I DIDN'T REALLY KNOW MUCH ABOUT THE COMPANY  
01:34PM 14 OTHER THAN READING A FEW PRESS RELEASES THAT AT THAT POINT WERE  
01:34PM 15 AVAILABLE.  
01:34PM 16 SO I -- YOU KNOW, I HAD A VERY OPEN MIND. WE WERE GOING  
01:34PM 17 DOWN THERE TO JUST SORT OF HEAR THE STORY.  
01:35PM 18 I REMEMBER ARRIVING AT THE BUILDING, GOING THROUGH THE  
01:35PM 19 SECURITY PROCESS TO KIND OF GET INTO THE LOBBY, THROUGH THE  
01:35PM 20 LOBBY.  
01:35PM 21 EVENTUALLY WE WERE USHERED THROUGH WHAT WAS A LOBBY AREA  
01:35PM 22 INTO, YOU KNOW, PAST THE KITCHEN, PAST A WHOLE BUNCH OF PEOPLE  
01:35PM 23 WORKING, INTO A CONFERENCE ROOM IN THE BACK OF THE BUILDING,  
01:35PM 24 AND THAT'S WHERE WE, THAT'S WHERE WE MET MS. HOLMES AND  
01:35PM 25 MR. BALWANI.

01:35PM 1 THAT WAS -- SO WE SAT DOWN AND THEY WALKED US THROUGH THE  
01:35PM 2 BUSINESS, THE THERANOS BUSINESS.  
01:35PM 3 AND SO THEY STARTED OUT TALKING ABOUT THE TECHNOLOGY, WHAT  
01:35PM 4 IT COULD DO, THAT IT COULD MATCH ALL THOUSAND CPT CODES THAT  
01:35PM 5 REFERENCE LABORATORIES LIKE QUEST AND LABCORP, THE COMPANIES  
01:35PM 6 THAT DO A LOT OF THE LAB TESTING, THAT IT COULD DO ALL OF THOSE  
01:36PM 7 TESTS.  
01:36PM 8 THEY DESCRIBED FOR US HOW THE LAST TEN YEARS THEY HAD BEEN  
01:36PM 9 IN STEALTH MODE AND OVER THAT TIME THEY HAD BEEN WORKING WITH  
01:36PM 10 THE GOVERNMENT, THE DEPARTMENT OF DEFENSE, AND THE  
01:36PM 11 PHARMACEUTICAL INDUSTRY, AND THEY DESCRIBED BOTH OF THOSE, BOTH  
01:36PM 12 OF THOSE ACTIVITIES.  
01:36PM 13 THE DEPARTMENT OF DEFENSE, THEY TALKED ABOUT HOW THEIR  
01:36PM 14 TECHNOLOGY HAD BEEN, WAS BEING USED ON MEDEVACS, HOW IMPORTANT  
01:36PM 15 IT WAS, HOW IT ACTUALLY SAVED LIVES IN THE BATTLEFIELD TO GET  
01:36PM 16 REALLY IMPORTANT DIAGNOSTIC INFORMATION TO EMERGENCY --  
01:36PM 17 MILITARY EMERGENCY ROOMS WITHIN AN HOUR THAT SAVED LIVES.  
01:36PM 18 THEY TALKED ABOUT THE PHARMACEUTICAL INDUSTRY AND HOW THEY  
01:36PM 19 HAD NUMEROUS PHARMACEUTICAL CLIENTS THAT HAD ASKED THEM TO USE  
01:36PM 20 THEIR TECHNOLOGY, DEVELOP SPECIFIC TESTS FOR EXPERIMENTAL  
01:36PM 21 MEDICINES, WHICH THEY THEN, WHICH THEY THEN DID AND PROVIDED  
01:36PM 22 THAT SERVICE TO THOSE COMPANIES.  
01:37PM 23 AND THEY SAID THAT THERE WERE SO MANY THINGS THAT THEY HAD  
01:37PM 24 TO DO WORKING WITH THE PHARMACEUTICAL COMPANIES, SO MANY  
01:37PM 25 DIFFERENT TESTS THAT THEY HAD TO DEVELOP, THAT THAT'S WHAT

01:37PM 1 OPENED THEIR EYES TO THE IDEA THAT, YOU KNOW, WE SHOULD, WE  
01:37PM 2 SHOULD DO A BROAD RETAIL PRODUCT.

01:37PM 3 THEY, THEY THEN TALKED ABOUT THE QUALITY OF THE TECHNOLOGY  
01:37PM 4 AND EXPLAINED TO US THAT THEIR SYSTEMS, THEIR PROPRIETARY  
01:37PM 5 TECHNOLOGY WAS ACTUALLY SUPERIOR TO THE CONVENTIONAL LABORATORY  
01:37PM 6 SYSTEMS THAT WERE USED.

01:37PM 7 AND THEY DESCRIBED THE VARIABILITY THAT EXISTS IN A  
01:37PM 8 TYPICAL REFERENCE LAB WHERE YOU SEE ALL SORTS OF DIFFERENT  
01:37PM 9 THIRD PARTY EQUIPMENT. ALL OF THAT EQUIPMENT HAS HUMAN LAB  
01:37PM 10 TECHNICIANS THAT OPERATE THAT EQUIPMENT, THERE'S DIFFERENT  
01:37PM 11 CHEMICALS THAT GO THAT NEED TO BE USED WITH DIFFERENT SYSTEMS,  
01:37PM 12 AND THAT INTRODUCES A LOT OF VARIABILITY INTO TESTING RESULTS,  
01:37PM 13 BOTH BETWEEN DIFFERENT PIECES OF EQUIPMENT IN THE SAME LAB, AND  
01:38PM 14 THEN BETWEEN DIFFERENT LABORATORIES.

01:38PM 15 AND THEY CONTRASTED THAT TO THEIR TECHNOLOGY, WHICH WAS  
01:38PM 16 EVERYTHING WAS CONTAINED, YOU KNOW, IN, IN ONE, IN ONE SYSTEM.

01:38PM 17 AND AS A RESULT, THEY HAD NO HUMAN VARIATION, AND THEY  
01:38PM 18 EXPLAINED TO US THAT THAT DRAMATICALLY DECREASED THE  
01:38PM 19 VARIABILITY AND THE CONSISTENCY OF RESULTS ON THEIR PROPRIETARY  
01:38PM 20 TECHNOLOGY, AND I THINK THEY TOLD US SOMETHING TO THE ORDER OF,  
01:38PM 21 YOU KNOW, LESS THAN 3 PERCENT OR 4 PERCENT KIND OF VARIATION,  
01:38PM 22 SYSTEM LEVEL VARIATION.

01:38PM 23 AND THEY COMPARED THAT TO TESTS, I THINK THEY USED THE  
01:38PM 24 EXAMPLE LIKE HIGH DENSITY LIPOPROTEIN, OR HDL, WHERE YOU CAN  
01:38PM 25 SEE 30, 35 PERCENT VARIATION WITHIN THE SAME LAB JUST BECAUSE

01:38PM 1 OF INHERENTLY, YOU KNOW, ALL OF THE SOURCES OF POTENTIAL ERROR  
01:39PM 2 AND VARIANCE THAT COULD OCCUR.  
01:39PM 3 SO THEY EXPLAINED THAT TO US.  
01:39PM 4 WE THEN PIVOTED BACK --  
01:39PM 5 Q. MR. GROSSMAN, I DON'T MEAN TO INTERRUPT YOU, BUT I DID  
01:39PM 6 HAVE SOME FOLLOW-UP QUESTIONS ABOUT WHAT YOU JUST DESCRIBED.  
01:39PM 7 SO I DON'T MEAN TO CUT YOU OFF.  
01:39PM 8 BUT LET ME ASK YOU AND GO BACK TO WHERE YOU STARTED, WHICH  
01:39PM 9 WAS THE SECURITY PROCEDURES THAT YOU WERE GOING THROUGH IN  
01:39PM 10 THERE.  
01:39PM 11 YOU'VE BEEN AT PRIVATE COMPANIES BEFORE AS PART OF YOUR  
01:39PM 12 INVESTMENT PROCESS; CORRECT?  
01:39PM 13 A. YES.  
01:39PM 14 Q. AND YOU'VE HAD AN OPPORTUNITY TO -- HOW DID THERANOS'S  
01:39PM 15 COMPARE TO WHAT YOU HAD EXPERIENCED PREVIOUSLY?  
01:39PM 16 A. THAT'S ACTUALLY KIND OF WHY I REMEMBER IT IS IT'S -- IT'S  
01:39PM 17 VERY UNUSUAL FOR A PRIVATE COMPANY TO HAVE THAT KIND OF  
01:39PM 18 SECURITY.  
01:39PM 19 NORMALLY YOU GET OFF THE ELEVATOR AND YOU'RE IN THE OFFICE  
01:39PM 20 AND THERE'S A FEW PEOPLE THERE.  
01:39PM 21 AND THIS WAS, THIS WAS LIKE, YOU KNOW, TRYING TO GET INTO  
01:39PM 22 A FORTUNE 500 COMPANY AND, YOU KNOW, WITH, YOU KNOW, SECURITY,  
01:39PM 23 YOU KNOW, IMPOSING SORT OF SECURITY TYPE, YOU KNOW, PEOPLE THAT  
01:39PM 24 WERE IN THE LAB BEE AREA.  
01:40PM 25 IT WAS JUST A -- IT HAD A DIFFERENT FEEL, A VERY DIFFERENT

01:40PM 1 FEEL FROM WHAT WE TYPICALLY SEE FROM PRIVATE COMPANIES.

01:40PM 2 Q. AND WHO DID MOST OF THE TALKING IN THIS MEETING IN

01:40PM 3 DECEMBER OF 2013 WITH MS. HOLMES AND MR. BALWANI?

01:40PM 4 A. THIS FIRST MEETING, MS. HOLMES DID MOST OF THE TALKING IN

01:40PM 5 THE FIRST MEETING.

01:40PM 6 Q. AND WERE THERE ANY TIMES WHEN MR. BALWANI INTERRUPTED OR

01:40PM 7 DISAGREED WITH MS. HOLMES?

01:40PM 8 A. NO, NOT TO MY MEMORY.

01:40PM 9 Q. AND DID MS. HOLMES AND MR. BALWANI MAKE STATEMENTS TO YOU

01:40PM 10 ABOUT USE OF THERANOS'S TECHNOLOGY BY THE MILITARY?

01:40PM 11 A. YES.

01:40PM 12 Q. AND I THINK YOU DESCRIBED YOU WERE TOLD IT WAS BEING USED

01:40PM 13 ON MEDEVAC HELICOPTERS?

01:40PM 14 A. YEAH, THEY SAID THEY HAD BEEN WORKING WITH THE DEPARTMENT

01:40PM 15 OF DEFENSE AND THE MILITARY FOR THE LAST TEN YEARS, THAT IT HAD

01:40PM 16 BEEN ONE OF THE REASONS THAT -- IT ALLOWED -- THE WORK THAT IT

01:40PM 17 HAD BEEN DOING WITH THE GOVERNMENT HAD ALLOWED THE COMPANY TO

01:40PM 18 GET THROUGH THIS SORT OF STEALTH MODE WHERE THEY WERE -- YOU

01:40PM 19 KNOW, THEY HADN'T RAISED MONEY IN I THINK OVER A DECADE.

01:41PM 20 SO, YEAH, THE GOVERNMENT -- AND THEN OBVIOUSLY THE --

01:41PM 21 USING THIS TECHNOLOGY IN THE BATTLEFIELD ON MEDEVAC

01:41PM 22 HELICOPTERS, YOU KNOW, SPEAKS TO THE, YOU KNOW, THE, THE -- YOU

01:41PM 23 KNOW -- I MEAN, THE GOVERNMENT WOULD NEVER USE A PIECE OF

01:41PM 24 TECHNOLOGY ON SOLDIERS OR IN THE BATTLEFIELD, YOU KNOW, THEY

01:41PM 25 WOULDN'T JUST DO THAT KIND OF CASUALLY. THEY WOULD HAVE TO GO

01:41PM 1                   THROUGH A MAJOR VETTING PROCESS.

01:41PM 2                   AND, YOU KNOW, SO IT WAS A -- YOU KNOW, IT WAS AN

01:41PM 3                   IMPRESSIVE STATEMENT.

01:41PM 4                   Q.   WERE YOU ALSO IMPRESSED BY WHAT MS. HOLMES AND MR. BALWANI

01:41PM 5                   SAID ABOUT PHARMACEUTICAL COMPANIES?

01:41PM 6                   A.   YES, WE WERE.

01:41PM 7                   WE KNEW -- WE KNOW THOSE COMPANIES VERY WELL, THE MERCKS,

01:41PM 8                   THE AMGENS, THE PFIZERS. THE MOST IMPORTANT ASSET THAT THEY

01:41PM 9                   HAVE ARE EXPERIMENTAL MEDICINES, AND THE TINIEST MISTAKE IN THE

01:42PM 10                  CLINICAL TRIAL CAN SET ONE OF THOSE NEW MEDICINES BACK FOR

01:42PM 11                  YEARS. IT CAN COMPROMISE A CLINICAL TRIAL. AND SO THEY TAKE

01:42PM 12                  THAT MORE SERIOUSLY THAN ANYTHING ELSE IN THE COMPANY.

01:42PM 13                  AND SO THE FACT THAT THEY WERE USING THIS DIAGNOSTIC

01:42PM 14                  EQUIPMENT IN THOSE CLINICAL TRIAL SETTINGS ON ACTUAL HUMANS,

01:42PM 15                  YOU KNOW, THAT WAS ANOTHER, YOU KNOW, REALLY IMPRESSIVE

01:42PM 16                  STATEMENT AND JUST SPOKE TO THE QUALITY OF THE PRODUCT AND THE,

01:42PM 17                  THE CAPABILITIES OF THE TECHNOLOGY.

01:42PM 18                  Q.   AND MS. HOLMES AND MR. BALWANI MADE STATEMENTS TO YOU

01:42PM 19                  ABOUT ELIMINATING THE PREANALYTIC ERRORS? DID I HEAR YOU SAY

01:42PM 20                  SOMETHING TO THAT EFFECT?

01:42PM 21                  A.   YEAH. THEY EXPLAINED THAT THIS IS THE -- THE SYSTEM

01:42PM 22                  VARIATION ON THEIR TECHNOLOGY WAS DRAMATICALLY LESS THAN THE

01:42PM 23                  TYPICAL THIRD PARTY EQUIPMENT THAT ARE USED IN REFERENCE LABS

01:42PM 24                  LIKE QUEST OR LABCORP.

01:43PM 25                  SO, YES, THAT -- AND I ACTUALLY THEY ACTUALLY QUOTED US A

01:43PM 1 NUMBER, I THINK IT WAS, LIKE, LESS THAN 3 PERCENT OR LESS THAN  
01:43PM 2 4 PERCENT OR SOMETHING LIKE THAT.

01:43PM 3 Q. IN THIS MEETING IN DECEMBER OF 2013 WITH MS. HOLMES AND  
01:43PM 4 MR. BALWANI, DID THEY SHOW YOU ANY THERANOS DEVICES?

01:43PM 5 A. I DON'T RECALL SPECIFICALLY IF IT WAS THAT MEETING OR THE  
01:43PM 6 NEXT MEETING, BUT WE DID SEE DEVICES WHEN WE WERE THERE, YES.

01:43PM 7 Q. DESCRIBE THE DEVICES YOU WERE SHOWN ULTIMATELY.

01:43PM 8 A. I REMEMBER THEY HAD TWO, TWO DEVICES THAT THEY SHOWED US.  
01:43PM 9 THEY SHOWED US THE DEVICE THAT THEY USED I THINK IN THE

01:43PM 10 CLINICAL TRIAL SETTING. THEY HAD A BANK OF THOSE DEVICES ON

01:43PM 11 TABLES, YOU KNOW, IN A ROOM, IN THE LOBBY AREA FROM WHAT I  
01:43PM 12 REMEMBER.

01:43PM 13 AND THEN THEY HAD A SEPARATE ROOM WHERE THEY HAD THE, THE  
01:43PM 14 RETAIL, THE CURRENT SORT OF SAMPLE PROCESSING UNIT. THAT WAS,

01:44PM 15 THAT WAS A DIFFERENT SIZE. IT WAS -- I THINK IT WAS A LITTLE  
01:44PM 16 SMALLER OR A LITTLE BIT WIDER (INDICATING), AND IT HAD MORE OF

01:44PM 17 A USER INTERFACE, A DIFFERENT USER INTERFACE. THEY HAD A  
01:44PM 18 SCREEN THAT I THINK WAS DIFFERENT.

01:44PM 19 AND SO THEY HAD A SEPARATE ROOM WITH THOSE DEVICES THAT  
01:44PM 20 WERE, THAT WERE -- WITH THOSE DEVICES, AGAIN, FROM WHAT I  
01:44PM 21 REMEMBER, ON A TABLE.

01:44PM 22 Q. AND THIS IS A ROOM THAT MS. HOLMES AND MR. BALWANI SHOWED  
01:44PM 23 YOU?

01:44PM 24 A. YEAH. I, I DON'T REMEMBER WHETHER IT WAS ON THE WAY IN OR  
01:44PM 25 THE WAY OUT, BUT, YEAH, WE -- I REMEMBER TOURING THAT ROOM.

01:44PM 1 IT WAS IN BETWEEN THE SECURITY AREA AND THE KITCHEN AS YOU  
01:44PM 2 WALKED INTO THE BUILDING. THIS IS THEIR OLD -- THESE ARE THEIR  
01:44PM 3 OLD OFFICES BEFORE THEY MOVED OUT ONTO PAGE MILL ROAD.  
01:44PM 4 Q. OKAY. AND I OBSERVED YOU USING HAND GESTURES IN  
01:44PM 5 DESCRIBING THE DEVICES, WHICH AREN'T GOING TO SHOW UP IN THE  
01:44PM 6 RECORD.  
01:44PM 7 SO CAN YOU GIVE US A SENSE OF HOW BIG THE DEVICES WERE?  
01:44PM 8 WHAT THE DIMENSIONS WERE? HOW THEY COMPARED TO OTHER MEDICAL  
01:45PM 9 EQUIPMENT YOU WOULD HAVE OBSERVED?  
01:45PM 10 A. YEAH, THE DEVICES WERE -- THEY WERE THE SIZE OF KIND OF A  
01:45PM 11 PC, AND ONE WAS A LITTLE BIT TALLER AND THE OTHER WAS A LITTLE  
01:45PM 12 BIT WIDER, BUT ROUGHLY THAT SIZE. THE FORM FACTOR OF A, OF A  
01:45PM 13 PC.  
01:45PM 14 Q. AND WAS THE SIZE OF THE DEVICES ATTRACTIVE TO YOU?  
01:45PM 15 A. I MEAN, IT WAS, YEAH, SHOCKING HOW SMALL THE DEVICES WERE  
01:45PM 16 RELATIVE TO WHAT THEY COULD DO, YES.  
01:45PM 17 Q. AND WHY WAS THAT ATTRACTIVE TO YOU?  
01:45PM 18 A. WELL, IT'S -- YOU KNOW, A CONVENTIONAL REFERENCE  
01:45PM 19 LABORATORY HAS THOUSANDS OF SQUARE FEET, AND THEY HAVE  
01:45PM 20 THOUSANDS OF SQUARE FEET BECAUSE THEY HAVE DIFFERENT EQUIPMENT  
01:45PM 21 THAT DOES DIFFERENT TYPES OF ANALYSES.  
01:45PM 22 AND IT'S -- SO TO BE ABLE TO TAKE ALL OF THAT AND  
01:45PM 23 MINIATURIZE IT INTO SOMETHING THE SIZE OF A PC WAS JUST A --  
01:45PM 24 YOU KNOW, IT WAS KIND OF A REVOLUTIONARY APPROACH TO DIAGNOSTIC  
01:46PM 25 TESTING.

01:46PM 1 Q. IN THIS MEETING IN DECEMBER OF 2013, DID MS. HOLMES OR  
01:46PM 2 MR. BALWANI MAKE ANY STATEMENTS ABOUT THE AMOUNT OF REVENUE  
01:46PM 3 BEING GENERATED BY THERANOS'S RELATIONSHIP WITH PHARMA AND THE  
01:46PM 4 MILITARY?  
01:46PM 5 A. I DON'T SPECIFICALLY RECALL -- WELL, I DO REMEMBER AT THE  
01:46PM 6 END OF THE MEETING THEY TOLD US THAT THEY HAD RAISED, OH, I  
01:46PM 7 WANT TO SAY IT WAS \$220 MILLION OVER THE LAST TEN YEARS THROUGH  
01:46PM 8 WORKING WITH THE MILITARY AND PHARMA.  
01:46PM 9 I DON'T RECALL IF THEY BROKE OUT WHICH WAS WHICH, BUT THAT  
01:46PM 10 REVENUE IS WHAT SUSTAINED THE COMPANY OVER THAT TEN YEAR PERIOD  
01:46PM 11 THAT THEY WERE IN STEALTH MODE BUILDING THE NUMBER OF TESTS FOR  
01:46PM 12 THE RETAIL PRODUCT.  
01:46PM 13 Q. SO YOU WERE TOLD THAT THERANOS HAD 220 MILLION IN REVENUE?  
01:46PM 14 A. YES.  
01:46PM 15 Q. IN SOME COMBINATION FROM PHARMACEUTICAL COMPANIES AND THE  
01:47PM 16 MILITARY?  
01:47PM 17 A. CORRECT.  
01:47PM 18 Q. AND WAS THAT IMPRESSIVE TO YOU?  
01:47PM 19 A. YES, IT WAS.  
01:47PM 20 Q. AND WHY WAS IT IMPRESSIVE TO YOU?  
01:47PM 21 A. YES. WELL, FIRST OF ALL, MILITARY ACCOUNTS AND REVENUE  
01:47PM 22 FROM THE GOVERNMENT GO THROUGH A WHOLE VETTING PROCESS,  
01:47PM 23 PROCUREMENT PROCESS. THERE'S TECHNICAL DUE DILIGENCE.  
01:47PM 24 SO THE FACT THAT NOT ONLY WAS THE TECHNOLOGY USED IN A  
01:47PM 25 BATTLEFIELD SETTING, BUT IT HAD GONE THROUGH THAT WHOLE

01:47PM 1 PROCUREMENT PROCESS WAS EXTREMELY IMPRESSIVE.

01:47PM 2 AND THEN ON THE PHARMACEUTICAL SIDE, THERE ARE -- AS I

01:47PM 3 SAID BEFORE, THAT IS SUCH A CRITICALLY SENSITIVE AREA, YOU

01:47PM 4 KNOW, USING DIAGNOSTIC EQUIPMENT IN A CLINICAL TRIAL SETTING,

01:47PM 5 THE FACT THAT THEY WERE PAYING FOR THOSE SERVICES AND COMPETING

01:47PM 6 AGAINST GREAT COMPANIES, COMAX, IQVIA, PPD, I MEAN, THESE ARE

01:48PM 7 GLOBAL FORTUNE 500 COMPANIES THAT DO THIS TYPE OF CLINICAL

01:48PM 8 TRIAL WORK AND THEY PROVIDE THE LABORATORY SERVICES ASSOCIATED

01:48PM 9 WITH THOSE TRIALS.

01:48PM 10 SO THAT WAS, AGAIN, IT WAS A REAL, A REAL -- IT WAS VERY

01:48PM 11 IMPRESSIVE THAT THEY HAD GENERATED THAT MUCH BUSINESS WITH THE

01:48PM 12 PHARMACEUTICAL INDUSTRY OVER THE LAST TEN YEARS.

01:48PM 13 Q. HOW DID THIS MEETING IN DECEMBER OF 2013 END?

01:48PM 14 A. WELL, WE TALKED ABOUT THE WALGREENS DEAL.

01:48PM 15 THEY HIGHLIGHTED THAT THEY WERE -- ACTUALLY, AT THAT POINT

01:48PM 16 IN TIME THEY WERE, THEY WERE IN THE PROCESS OF ROLLING OUT TO

01:48PM 17 ALL 8100 WALGREENS STORES.

01:48PM 18 THEY WERE USING THEIR PROPRIETARY TECHNOLOGY ON ACTUAL

01:48PM 19 HUMANS. THEY WERE DOING TESTS AND BEING REIMBURSED, WHICH IS A

01:48PM 20 TERM THAT WE USE, WHICH BASICALLY MEANS THAT YOU'RE BEING PAID

01:48PM 21 FOR THOSE SERVICES BY TYPICALLY AN INSURANCE COMPANY.

01:48PM 22 SO THEY WERE -- SO THEY EXPLAINED THAT THAT WAS A -- THIS

01:49PM 23 WASN'T, YOU KNOW, WE ARE GOING TO DO THIS. THEY WERE ACTUALLY

01:49PM 24 DOING THAT.

01:49PM 25 THEY ALSO TALKED ABOUT THE VERTICAL INTEGRATION, WHICH WE

01:49PM 1 WERE -- WHICH WAS ANOTHER SURPRISING STATEMENT.

01:49PM 2 AND WHEN THEY SAY VERTICALLY INTEGRATED, THEY WERE

01:49PM 3 EXPLAINING THAT THEY WANTED TO, AND THEY WERE, MAKING ALL OF

01:49PM 4 THEIR OWN PROPRIETARY TECHNOLOGY.

01:49PM 5 AND IN THE MEDICAL DEVICE FIELD, IN THE CLINICAL

01:49PM 6 DIAGNOSTIC FIELD, THAT IS VERY UNUSUAL. IT'S SORT OF LIKE WHAT

01:49PM 7 YOU SEE WITH TECHNOLOGY, IPHONES. MOST OF THAT IS OUTSOURCED

01:49PM 8 TO COMPANIES THAT ARE -- THAT MAKE OR ASSEMBLE THOSE TYPES OF

01:49PM 9 MACHINES.

01:49PM 10 AND THE SAME IS TRUE IN THE MEDICAL DEVICE AND CLINICAL

01:49PM 11 DIAGNOSTICS PHASE.

01:49PM 12 SO THE FACT THAT THEY'RE GOING TO BE MAKING THEIR OWN

01:49PM 13 PROPRIETARY TECHNOLOGY WAS SURPRISING, AND THEY EXPLAINED THAT

01:49PM 14 THIS WAS BECAUSE IT ALLOWED THEM TO CONTROL THE COSTS, AND IT

01:49PM 15 WAS AN IMPORTANT SOURCE OF COMPETITIVE ADVANTAGE, SOMETHING

01:49PM 16 THAT WE KIND OF BUILT ON IN SUBSEQUENT MEETINGS.

01:49PM 17 AND THEN THE LAST THING WAS WE SORT OF LEFT AND ENDED AT

01:50PM 18 SORT OF THE FINANCING. WE'RE LOOKING TO RAISE MONEY, WE

01:50PM 19 HAVEN'T RAISED MONEY IN A LONG TIME, AND, YOU KNOW, IF YOU'RE

01:50PM 20 INTERESTED, LET US KNOW IF THERE'S AN INTEREST IN FOLLOWING UP

01:50PM 21 AFTER THIS INITIAL MEETING.

01:50PM 22 Q. YOU MENTIONED THERE WAS A REFERENCE TO VERTICAL

01:50PM 23 INTEGRATION AND THIS CONCEPT OF MAKING ALL OF YOUR OWN

01:50PM 24 EQUIPMENT.

01:50PM 25 WAS THAT ATTRACTIVE TO YOU?

01:50PM 1 A. YEAH. IT WAS, IT WAS AN UNUSUAL, IT WAS AN UNUSUAL  
01:50PM 2 STRATEGY FOR A COMPANY, A COMPANY AT THEIR STAGE.  
01:50PM 3 BUT I THINK IT HIGHLIGHTED JUST HOW UNIQUE AND SPECIAL THE  
01:50PM 4 PROPRIETARY TECHNOLOGY WAS AND HOW IMPORTANT IT WAS THAT THEY  
01:50PM 5 CONTROLLED, THAT THEY CONTINUED TO DRIVE THAT TECHNOLOGY DOWN  
01:50PM 6 THE COST CURVE.  
01:50PM 7 THEY -- THIS KIND OF CAME UP IN SUBSEQUENT MEETINGS, BUT,  
01:50PM 8 YOU KNOW, WE REALLY PUSHED THEM ON WHY NOT JUST SELL THE  
01:51PM 9 TECHNOLOGY? WHY NOT JUST BE A CLINICAL DIAGNOSTICS OR MEDICAL  
01:51PM 10 DEVICE COMPANY?  
01:51PM 11 AND THE ANSWER WAS THAT THEY WANTED TO USE -- BY BEING  
01:51PM 12 VERTICALLY INTEGRATING AND MAKING THEIR OWN EQUIPMENT, THAT  
01:51PM 13 PROVIDED THEM AN ENORMOUS COST ADVANTAGE IN THE LABORATORY  
01:51PM 14 SERVICES BUSINESS. THEY WERE COMPETING AGAINST COMPANIES THAT  
01:51PM 15 HAD TO BUY THIRD PARTY EQUIPMENT THAT COST A LOT OF MONEY, AND  
01:51PM 16 THEN THEY HAD TO GET PEOPLE TO WORK THAT EQUIPMENT.  
01:51PM 17 SO BY HAVING THEIR OWN EQUIPMENT AND MAKING IT THEMSELVES,  
01:51PM 18 THEY HAD THE ABILITY TO REMOVE A NUMBER OF THE -- THEY COULD  
01:51PM 19 CONTINUE TO DRIVE DOWN THE COMPLEXITY OF THE DEVICE, THEY COULD  
01:51PM 20 DRIVE COST DOWN.  
01:51PM 21 AND IT PROVIDED THEM A HUGE COST ADVANTAGE WHEN IT CAME TO  
01:51PM 22 DELIVERING LABORATORY SERVICES AGAINST AN INCUMBENT INDUSTRY  
01:51PM 23 THAT WAS, FOR ALL INTENTS AND PURPOSES, HADN'T CHANGED IN 30,  
01:51PM 24 40 YEARS, AND THAT'S THE LABCORPS AND THE QUESTS OF THE WORLD.  
01:52PM 25 Q. THANK YOU, MR. GROSSMAN.

01:52PM 1 I'VE PLACED BEFORE YOU A BINDER OF DOCUMENTS. DO YOU HAVE  
01:52PM 2 THAT IN FRONT OF YOU?  
01:52PM 3 A. YES.  
01:52PM 4 MR. LEACH: DOES THE COURT HAVE A COPY?  
01:52PM 5 THE COURT: YES.  
01:52PM 6 BY MR. LEACH:  
01:52PM 7 Q. I'D LIKE TO DRAW YOUR ATTENTION TO WHAT WE HAVE MARKED AS  
01:52PM 8 EXHIBIT 1360.  
01:52PM 9 A. OKAY.  
01:52PM 10 Q. AND DO YOU SEE IN THE BODY OF THIS DOCUMENT THERE'S AN  
01:52PM 11 EMAIL FROM SOMEONE NAMED CHRIS JAMES TO ELIZABETH HOLMES, WITH  
01:52PM 12 A COPY TO SUNNY BALWANI AND YOURSELF?  
01:52PM 13 A. YES, I DO.  
01:52PM 14 Q. AND DO YOU SEE THAT THIS IS DATED DECEMBER 23RD, 2013?  
01:52PM 15 A. YES.  
01:52PM 16 Q. AND IS THIS CLOSE IN TIME TO YOUR INITIAL MEETING WITH  
01:52PM 17 MS. HOLMES AND MR. BALWANI?  
01:52PM 18 A. YES. I BELIEVE IT WAS AFTER OUR INITIAL MEETING, YES.  
01:52PM 19 Q. OKAY. AND DOES THIS RELATE TO FOLLOWUP MR. JAMES HAD WITH  
01:53PM 20 YOU AND MS. HOLMES AND MR. BALWANI?  
01:53PM 21 A. YES.  
01:53PM 22 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS  
01:53PM 23 EXHIBIT 1360.  
01:53PM 24 MS. WALSH: NO OBJECTION.  
01:53PM 25 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:53PM 1 (GOVERNMENT'S EXHIBIT 1360 WAS RECEIVED IN EVIDENCE.)

01:53PM 2 MR. LEACH: MS. WACHS, IF WE CAN ZOOM IN ON THE TOP.

01:53PM 3 Q. MR. GROSSMAN, LET ME FIRST DRAW YOUR ATTENTION TO

01:53PM 4 MR. JAMES'S INITIAL EMAIL ON DECEMBER 19TH.

01:53PM 5 DO YOU SEE WHERE HE WROTE, "ELIZABETH, I WAS JUST CHECKING

01:53PM 6 IN TO SEE IF WE CAN MOVE THE PROCESS FORWARD. I UNDERSTAND UR

01:53PM 7 PRIORITIES ON GETTING YEAR END CLOSE DONE, BUT WE ARE VERY

01:53PM 8 INTERESTED."

01:53PM 9 DO YOU SEE THAT?

01:53PM 10 A. YES.

01:53PM 11 Q. AND WAS IT TRUE IN OR AROUND THIS TIME PERIOD THAT PFM WAS

01:53PM 12 VERY INTERESTED IN A POTENTIAL INVESTMENT?

01:53PM 13 A. YES, WE WERE VERY IMPRESSED THAT -- WITH WHAT WE LEARNED

01:53PM 14 IN THE FIRST MEETING.

01:53PM 15 Q. AND THEN UP AT THE TOP MR. JAMES WRITES, "ELIZABETH AND

01:53PM 16 SUNNY,

01:53PM 17 "WE WILL FOLLOW UP WITH DUE DILIGENCE QUESTIONS AND A CALL

01:54PM 18 WITH SUNNY WHEN IT WORKS. IN TERMS OF THE SIZE, WE ARE VERY

01:54PM 19 FLEXIBLE. OUR HEALTH CARE FUND CAN DO FROM 5 MIN TO 25 PLUS."

01:54PM 20 DO YOU SEE THAT?

01:54PM 21 A. YES.

01:54PM 22 Q. AND AFTER THIS INITIAL MEETING WITH MS. HOLMES AND

01:54PM 23 MR. BALWANI, DID YOU CONTINUE TO ENGAGE WITH MR. BALWANI TO GET

01:54PM 24 INFORMATION ABOUT THERANOS?

01:54PM 25 A. YES.

01:54PM 1 Q. LET ME MOVE FORWARD IN TIME TO JANUARY OF 2014.

01:54PM 2 MS. WACHS, WE CAN TAKE THIS DOWN.

01:54PM 3 DID YOU MEET WITH MS. HOLMES AND MR. BALWANI AGAIN EARLY

01:54PM 4 IN JANUARY OF 2014?

01:54PM 5 A. YES.

01:54PM 6 Q. WHERE WAS THIS MEETING?

01:54PM 7 A. THAT MEETING WAS ALSO -- IT WAS IN THEIR CORPORATE

01:54PM 8 HEADQUARTERS ON CALIFORNIA AVENUE IN PALO ALTO.

01:54PM 9 Q. OKAY. WHO ATTENDED THIS MEETING?

01:54PM 10 A. THIS MEETING WE BROUGHT A NUMBER OF OTHER INVESTMENT

01:54PM 11 PROFESSIONALS FROM OUR FIRM.

01:54PM 12 SO WE HAD VIVEK KHANNA, WHO IS OUR -- HE'S OUR HEALTH CARE

01:55PM 13 SERVICES ANALYST; WE HAD ALEX RABODZEY, WHO IS OUR BIOTECH

01:55PM 14 DIAGNOSTICS ANALYST; AND THEN I THINK WE HAD SRI BALASURYAN,

01:55PM 15 WHO WAS OUR JUNIOR ANALYST AT THE TIME AND HELPS WITH A LOT OF

01:55PM 16 THE MODEL BUILDING AND KIND OF WORKED FOR EVERYBODY, WORKED FOR

01:55PM 17 A NUMBER OF THE SENIOR PEOPLE.

01:55PM 18 I WAS ALSO THERE.

01:55PM 19 AND I DON'T RECALL WHETHER MY PARTNER, CHRIS, WAS THERE OR

01:55PM 20 NOT. HE MAY HAVE BEEN.

01:55PM 21 Q. OKAY. WERE YOU SHOWN ANY DOCUMENTS DURING THIS MEETING?

01:55PM 22 A. YES. THIS MEETING WE WERE SHOWN -- THEY HAD A

01:55PM 23 PRESENTATION ON A LAPTOP AND THAT INCLUDED A NUMBER OF -- IT

01:55PM 24 INCLUDED A PRESENTATION. IT HAD, IT HAD SCIENTIFIC TESTING

01:55PM 25 INFORMATION, AND IT ALSO HAD -- THEY ALSO HAD A FINANCIAL MODEL

01:55PM 1 OF THE COMPANY THAT WE, WE REVIEWED IN THAT MEETING.

01:56PM 2 Q. PRIOR TO THIS MEETING, DID YOU PROPOUND QUESTIONS TO

01:56PM 3 MR. BALWANI ON CERTAIN TOPICS THAT YOU WERE LOOKING FOR

01:56PM 4 INFORMATION ON?

01:56PM 5 A. YES. WE -- OUR TEAM PUT TOGETHER A LIST OF QUESTIONS SO

01:56PM 6 THAT WE COULD MAKE THE NEXT MEETING AS PRODUCTIVE AS POSSIBLE.

01:56PM 7 SO WE ASSEMBLED THOSE QUESTIONS AND THEN SENT THEM TO I

01:56PM 8 BELIEVE IT WAS MR. BALWANI.

01:56PM 9 Q. LET ME DRAW YOUR ATTENTION TO WHAT WE HAVE MARKED AS

01:56PM 10 EXHIBIT 1404.

01:56PM 11 DOES THIS APPEAR TO BE AN EMAIL FROM MR. BALWANI TO YOU

01:56PM 12 AND OTHERS DATED JANUARY 7TH, 2014?

01:56PM 13 A. YES.

01:56PM 14 Q. AND DO YOU SEE THE TOPIC DUE DILIGENCE QUESTIONS?

01:57PM 15 A. YES.

01:57PM 16 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS

01:57PM 17 EXHIBIT 1404.

01:57PM 18 MS. WALSH: NO OBJECTION.

01:57PM 19 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:57PM 20 (GOVERNMENT'S EXHIBIT 1404 WAS RECEIVED IN EVIDENCE.)

01:57PM 21 MR. LEACH: LET'S START, IF WE COULD, MS. WACHS, AT

01:57PM 22 THE BOTTOM OF PAGE 1.

01:57PM 23 Q. DO YOU SEE, MR. GROSSMAN, THE DATE OF THIS IS

01:57PM 24 JANUARY 6TH, 2014?

01:57PM 25 A. YES.

01:57PM 1 Q. AND THE SUBJECT IS DUE DILIGENCE QUESTIONS?

01:57PM 2 A. YES.

01:57PM 3 Q. AND IN THE FIRST PARAGRAPH YOU WROTE, "I HOPE YOU BOTH HAD

01:57PM 4 AN ENJOYABLE FINISH TO WHAT WAS OBVIOUSLY A TREMENDOUSLY

01:57PM 5 SUCCESSFUL YEAR FOR THE COMPANY."

01:57PM 6 AND THEN YOU CONTINUE. "BELOW IS OUR LIST OF DUE

01:57PM 7 DILIGENCE QUESTIONS. WE WERE HOPING TO START THE PROCESS AS

01:57PM 8 SOON AS POSSIBLE."

01:57PM 9 DO YOU SEE THAT?

01:57PM 10 A. YES.

01:57PM 11 Q. AND DOES THIS INCLUDE A LIST OF QUESTIONS THAT YOU PUT

01:57PM 12 FORTH TO MS. HOLMES AND MR. BALWANI ABOUT WHAT YOU WANTED TO

01:57PM 13 LEARN ABOUT THERANOS?

01:57PM 14 A. YES.

01:57PM 15 Q. OKAY. AND IF WE COULD ZOOM BACK UP, MS. WACHS, TO THE

01:58PM 16 NEXT EMAIL IN THE CHAIN.

01:58PM 17 DO YOU SEE A RESPONSE FROM MR. BALWANI?

01:58PM 18 A. YES.

01:58PM 19 Q. AND DO YOU SEE WHERE HE WROTE IN THE SECOND PARAGRAPH, "WE

01:58PM 20 ARE AVAILABLE THIS WEDNESDAY FROM 1-5 P.M. OR ON FRIDAY FROM 9

01:58PM 21 A.M. TO 1 P.M. AT OUR OFFICE. WE CAN COVER ALL OF YOUR

01:58PM 22 QUESTIONS IN DETAIL."

01:58PM 23 IS THAT WHAT MR. BALWANI WROTE TO YOU?

01:58PM 24 A. YES.

01:58PM 25 Q. OKAY. AND IF WE CAN ZOOM OUT AGAIN, MS. WACHS. AND

01:58PM 1 ACTUALLY, IF WE CAN GO ONE MORE UP THE CHAIN.

01:58PM 2 DOES IT APPEAR THAT YOU AND MR. BALWANI CONFIRMED A

01:58PM 3 MEETING FOR FRIDAY THAT FIRST OR SECOND WEEK OF JANUARY AT

01:58PM 4 THERANOS'S OFFICES?

01:58PM 5 A. YES.

01:58PM 6 Q. OKAY. I'D LIKE TO GO THROUGH SOME OF THE QUESTIONS THAT

01:58PM 7 YOU ASKED ON PAGE 2.

01:59PM 8 BEFORE WE GET TO THE QUESTIONS, IN THIS YOU WROTE, DEAL

01:59PM 9 TEAM: BRIAN GROSSMAN, ALEX RABODZEY, VIVEK KHANNA, AND

01:59PM 10 SRI BALASURYAN?

01:59PM 11 DO YOU SEE THAT?

01:59PM 12 A. YES.

01:59PM 13 Q. AND ARE THOSE FOLKS THAT WORK WITHIN YOUR COMPANY?

01:59PM 14 A. YES.

01:59PM 15 Q. AND YOU HAVE AN OUTLINE WITH SEVEN BULLETS BEGINNING WITH

01:59PM 16 TECHNOLOGY AND ENDING IN FINANCIAL MODEL/PROJECTIONS.

01:59PM 17 DO YOU SEE THAT?

01:59PM 18 A. YES.

01:59PM 19 Q. AND DO THESE COVER THE TOPICS THAT YOU WERE TRYING TO GET

01:59PM 20 INFORMATION FROM MS. HOLMES AND MR. BALWANI ABOUT TO MAKE AN

01:59PM 21 INVESTMENT DECISION?

01:59PM 22 A. YES.

01:59PM 23 Q. OKAY. LET'S ZOOM IN ON PARAGRAPH 1 IF WE COULD,

01:59PM 24 MS. WACHS.

01:59PM 25 YOUR FIRST QUESTION WAS, "HOW DOES YOUR ACCURACY AND SPEED

01:59PM 1 STACK UP AGAINST TRADITIONAL TESTS."

01:59PM 2 DO YOU SEE THAT?

01:59PM 3 A. YES.

01:59PM 4 Q. AND WHY WERE YOU ASKING THAT?

02:00PM 5 A. WELL, WE WANTED TO UNDERSTAND WHETHER THE TECHNOLOGY WAS

02:00PM 6 BETTER THAN CONVENTIONAL DIAGNOSTIC EQUIPMENT, WHETHER IT WAS

02:00PM 7 EQUIVALENT, WHETHER IT WAS MAYBE NOT QUITE AS GOOD BUT IT WAS

02:00PM 8 FASTER.

02:00PM 9 WE WANTED TO REALLY UNDERSTAND EXACTLY WHAT THE

02:00PM 10 CAPABILITIES WERE, WHAT THE LIMITATIONS WERE SO THAT WE COULD

02:00PM 11 UNDERSTAND HOW THIS WAS LIKELY GOING TO IMPACT THE LAB TESTING

02:00PM 12 MARKET OVER THE NEXT COUPLE OF YEARS.

02:00PM 13 Q. AND DID THIS TOPIC COME UP IN YOUR MEETING WITH MS. HOLMES

02:00PM 14 AND MR. BALWANI AT THERANOS'S OFFICES?

02:00PM 15 A. YES.

02:00PM 16 Q. AND WHAT DID THEY TELL YOU?

02:00PM 17 A. THIS WAS ONE OF THE FIRST THINGS WE TALKED ABOUT IN THE

02:00PM 18 MEETING, IN THE SECOND MEETING SUBSEQUENT TO THIS.

02:00PM 19 AND THEY REITERATED WHAT THEY TOLD US IN THE FIRST

02:00PM 20 MEETING, WHICH WAS THEIR TECHNOLOGY COULD DO EVERYTHING THAT A

02:00PM 21 REFERENCE LAB OFFERS IN A RETAIL SETTING.

02:00PM 22 THEY -- THERE WERE NO LIMITATIONS. IT TOOK A LOT OF WORK.

02:01PM 23 IT WAS HARD WORK TO KIND OF GET TO THIS POINT, BUT THEY WERE

02:01PM 24 CRYSTAL CLEAR THAT THEY NEEDED TO WAIT UNTIL THEY HAD

02:01PM 25 100 PERCENT COVERAGE BEFORE THEY ROLLED OUT A RETAIL STRATEGY.

02:01PM 1 THEY EXPLAINED HOW THE ONE CHALLENGING AREA FOR THEM WAS  
02:01PM 2 MEASURING -- WAS A PROCESS -- AN ANALYTIC TECHNOLOGY CALLED  
02:01PM 3 CULTURING WHERE YOU GROW MICROORGANISMS.  
02:01PM 4 THEY SAID THAT WAS ONE OF THE HARDEST THINGS THAT THEY HAD  
02:01PM 5 TO DEAL WITH.  
02:01PM 6 AND THEY EXPLAINED THAT THEY HAD A TECHNOLOGICAL  
02:01PM 7 BREAKTHROUGH THAT THEY HAD DEVELOPED ON THEIR OWN CALLED  
02:01PM 8 NUCLEIC ACID AMPLIFICATION, WHICH ALLOWED THEM TO IDENTIFY  
02:01PM 9 THESE MICROORGANISMS, WHICH CAN BE BACTERIA OR VIRUSES, IN A  
02:01PM 10 MATTER OF MINUTES INSTEAD OF WHAT TYPICALLY TOOK TWO OR THREE  
02:01PM 11 DAYS, AND THAT WAS GOING TO FORM THE BASIS OF AN ENTIRELY NEW  
02:02PM 12 BUSINESS FOCUSsing ON HELPING HOSPITALS OR REPLACING -- USING  
02:02PM 13 THIS TECHNOLOGY TO HELP TEST FOR THESE TYPES OF BACTERIA AND  
02:02PM 14 VIRUSES, THESE MICROORGANISMS.  
02:02PM 15 SO THAT, THAT -- AND I GUESS THE ONLY OTHER THING IS THAT  
02:02PM 16 THEY -- YOU KNOW, THAT I WOULD ADD IS THAT THEY DESCRIBED, YOU  
02:02PM 17 KNOW, THE WHOLE PROCESS OF HOW YOU HAVE TO DEVELOP THE TEST,  
02:02PM 18 VALIDATE THE TEST, AND THEN BRING THAT UP IN THEIR CLIA  
02:02PM 19 LABORATORY.  
02:02PM 20 AND THEY WERE -- THEY EMPHASIZED TO US THAT THEY DID THIS,  
02:02PM 21 EVERY ONE OF THESE TESTS THEY DEVELOPED AND VALIDATED WAS DONE  
02:02PM 22 ON THEIR PROPRIETARY SYSTEMS.  
02:02PM 23 Q. YOU GO ON TO ASK, "WHAT ARE THE KEY TESTS FROM A  
02:03PM 24 COMMERCIAL STANDPOINT AND HOW DOES ACCURACY AND SPEED COMPARE  
02:03PM 25 SPECIFICALLY ON THOSE?

02:03PM 1 "CAN YOU ANALYZE SAMPLES AT POC (WALGREENS) OR WILL IT  
02:03PM 2 NEED TO GO TO A CLIA FACILITY?  
02:03PM 3 "WHAT ARE THE LIMITATIONS TO THE TECHNOLOGY? WHAT TESTS  
02:03PM 4 ARE NOT FEASIBLE?"  
02:03PM 5 WERE THESE QUESTIONS YOU POSED TO MS. HOLMES AND  
02:03PM 6 MR. BALWANI IN YOUR MEETING IN JANUARY OF 2014?  
02:03PM 7 A. YES.  
02:03PM 8 Q. AND WHAT WERE YOU TOLD?  
02:03PM 9 A. WELL, THE ANSWER -- SO GOING KIND OF ONE BY ONE, THERE  
02:03PM 10 WERE OVER A THOUSAND BILLING CODES FOR LABORATORIES -- THAT  
02:03PM 11 LABORATORIES USED IN THE RETAIL SETTING. THEY COULD MATCH --  
02:03PM 12 THEIR ANALYTIC TECHNIQUES COULD MATCH ALL OF THOSE. SO THEY  
02:03PM 13 REITERATED THAT.  
02:03PM 14 THEY EXPLAINED THAT THEY COULD GET RESULTS IN FOUR HOURS,  
02:03PM 15 WHICH WAS FASTER THAN TYPICAL REFERENCE LABS.  
02:04PM 16 AND THEY TALKED ABOUT HOW THAT HAD THE POTENTIAL TO CHANGE  
02:04PM 17 THE PARADIGM WHERE PHYSICIANS AND PATIENTS INTERACT. YOU COULD  
02:04PM 18 HAVE YOUR LAB TESTS DONE ON THE SAME DAY THAT YOU SEE YOUR  
02:04PM 19 DOCTOR, AND HOW PROFOUND THAT WAS.  
02:04PM 20 THEY ALSO EXPLAINED THAT A TECHNOLOGY LIKE THIS THAT WAS  
02:04PM 21 SAFER, EASIER TO ACCESS, FASTER, AS WE GOT MORE INTO THE  
02:04PM 22 MEETING, LESS EXPENSIVE, WOULD DRAMATICALLY INCREASE THE SIZE  
02:04PM 23 OF THE MARKET. SO THEY ALSO KIND OF EXPLAINED THAT TO US.  
02:04PM 24 THEY -- AS FAR AS THE THIRD -- THE NEXT BULLET POINT, THEY  
02:04PM 25 EXPLAINED HOW THEY HAD A TWO-STAGE APPROACH TO THE RETAIL

02:04PM 1 SETTING.

02:04PM 2 STAGE ONE WOULD BE USING THEIR PROPRIETARY TECHNOLOGY IN

02:04PM 3 THEIR OWN CLIA LABORATORY FACILITIES, COLLECTING SPECIMENS FROM

02:04PM 4 WALGREENS LOCATIONS, AND THEN ANALYZING THEM LOCALLY.

02:05PM 5 PHASE TWO WOULD BE WHERE THEY WOULD ACTUALLY USE THE --

02:05PM 6 THEY WOULD DEPLOY THE SAMPLE PROCESSING UNIT INTO THE WALGREENS

02:05PM 7 SETTING.

02:05PM 8 SO THEY EXPLAINED THOSE WERE THE TWO PHASES.

02:05PM 9 AND AS FAR AS LIMITATIONS AND WHAT WASN'T FEASIBLE, THEY

02:05PM 10 SAID THERE WAS NOTHING THAT WAS -- THAT THERE WERE NO

02:05PM 11 LIMITATIONS TO THE TECHNOLOGY.

02:05PM 12 Q. YOU SAID THERE WAS A DISCUSSION ABOUT COSTS OR THE COST OF

02:05PM 13 THE DEVICE.

02:05PM 14 DO YOU RECALL THAT COMING UP IN THIS JANUARY MEETING?

02:05PM 15 A. YES.

02:05PM 16 THEY EXPLAINED TO US THAT -- WELL, THERE WERE SORT OF TWO

02:05PM 17 ASPECTS OF COST.

02:05PM 18 THE FIRST IS THAT THEY EXPLAINED THAT THEIR DEVICES

02:05PM 19 ALREADY, THEY ALREADY COST LESS THAN SOME OF THE OTHER

02:05PM 20 EQUIPMENT THAT THIRD PARTY LABORATORIES HAD TO BUY, AND THAT

02:05PM 21 THEY USED AN EXAMPLE OF A COMPANY CALLED CEPHEID AND ANOTHER

02:05PM 22 COMPANY CALL ILLUMINA, BOTH OF WHICH SELL EXPENSIVE MOLECULAR

02:05PM 23 DIAGNOSTIC EQUIPMENT, SO THE TYPE OF STUFF THAT CAN IDENTIFY,

02:05PM 24 THAT CAN IDENTIFY GENETIC MATERIAL WITHIN A SAMPLE.

02:06PM 25 THEY ALREADY HAD -- THEIR TECHNOLOGY ALREADY COST

02:06PM 1 20 PERCENT LESS THAN THOSE MACHINES, AND THEY HAD A -- THEY  
02:06PM 2 BELIEVED THEY WOULD BE 80 PERCENT BELOW THE COST OF THOSE  
02:06PM 3 MACHINES WITHIN A SHORT PERIOD OF TIME AS THEY RAMPED  
02:06PM 4 PRODUCTION OF THEIR MINILABS.  
02:06PM 5 THEY ALSO EXPLAINED TO US THAT THIS WHOLE CONCEPT OF  
02:06PM 6 TAKING THE ENTIRE LAB AND MINIATURIZING IT HAD PROFOUND  
02:06PM 7 IMPLICATIONS FOR COST.  
02:06PM 8 UNLIKE CONVENTIONAL LABORATORIES, YOU WOULDN'T HAVE TO  
02:06PM 9 HAVE A BIG, THOUSANDS OF SQUARE FOOT FACILITY. YOU WOULDN'T  
02:06PM 10 HAVE TO PUT MULTIPLE MACHINES INTO THOSE FACILITIES.  
02:06PM 11 THEY COULD SERVICE -- THE EXAMPLE THEY GAVE US WAS THE  
02:06PM 12 PHOENIX MARKET. THEY COULD SUPPORT THE ENTIRE PHOENIX ROLLOUT,  
02:07PM 13 THE ENTIRE PHOENIX MARKET WITH A 200 SQUARE FOOT FACILITY USING  
02:07PM 14 THE PROPRIETARY TECHNOLOGY.  
02:07PM 15 AND THEY SAID IT PROVIDED AN ENORMOUS COST ADVANTAGE  
02:07PM 16 RELATIVE TO THE QUESTS AND THE LABCORPS THAT THEY COMPETE WITH,  
02:07PM 17 AND IT WAS THE REASON WHY THEY COULD OFFER THEIR SERVICE AT  
02:07PM 18 HALF THE MEDICARE PRICE.  
02:07PM 19 Q. SO HAVING A DEVICE THAT WAS SMALLER AND COST LESS AND FIT  
02:07PM 20 WITHIN A SMALLER SQUARE FOOTAGE AREA, THAT WAS WHAT WAS -- WAS  
02:07PM 21 THAT ATTRACTIVE TO YOU?  
02:07PM 22 A. IT WAS A RADICAL CHANGE IN HOW THIS INDUSTRY OPERATED.  
02:07PM 23 IT, IT WAS -- IT HAD ENORMOUS IMPLICATIONS FOR THE EXISTING  
02:07PM 24 INDUSTRY.  
02:07PM 25 AND IT'S ONE OF THE THINGS THAT, AS INVESTORS, WE LOOK FOR

02:07PM 1 IF YOU CAN FIND SOMETHING NEW THAT IS A WIN FOR EVERYBODY. THE  
02:07PM 2 PATIENT WINS, THE SYSTEM WINS, YOU KNOW, YOU HAVE BETTER HEALTH  
02:08PM 3 OUTCOMES.

02:08PM 4 YOU KNOW, THIS SEEMED TO CHECK ALL OF THOSE BOXES BASED ON  
02:08PM 5 THAT.

02:08PM 6 Q. AND WERE YOU TOLD THAT THIS WAS SOMETHING THAT WAS  
02:08PM 7 ASPIRATIONAL, THAT THERANOS HOPED TO DO ONE DAY? OR SOMETHING  
02:08PM 8 THAT THERANOS COULD DO IN JANUARY OF 2014?

02:08PM 9 MS. WALSH: OBJECTION. LEADING.

02:08PM 10 THE COURT: OVERRULED.

02:08PM 11 YOU CAN ANSWER THE QUESTION.

02:08PM 12 THE WITNESS: THEY TOLD US IN THE FIRST MEETING THAT  
02:08PM 13 THEY WERE ALREADY USING THE TECHNOLOGY ON HUMANS IN THE ACTUAL  
02:08PM 14 SETTING AT WALGREENS. THAT WAS IN LATE DECEMBER.

02:08PM 15 AND THEY ALREADY TOLD US THAT IT HAD BEEN USED -- THEY  
02:08PM 16 ALREADY TOLD US THAT IT HAD BEEN USED ON MEDEVACS IN THE  
02:08PM 17 MILITARY ENVIRONMENT, BATTLEFIELD ENVIRONMENT, AND THAT IT HAD  
02:08PM 18 BEEN USED FOR YEARS IN THE CLINICAL TRIAL PHARMACEUTICAL  
02:08PM 19 SETTING.

02:08PM 20 SO OUR UNDERSTANDING WAS THAT THIS WAS A TECHNOLOGY THAT  
02:09PM 21 EXISTED TODAY. THERE WAS NOTHING ASPIRATIONAL ABOUT WHAT THEY  
02:09PM 22 HAD TOLD US THE TECHNOLOGY WAS CAPABLE OF DOING.

02:09PM 23 MR. LEACH: IF WE CAN ZOOM OUT, MS. WACHS, AND GO  
02:09PM 24 DOWN TO --

02:09PM 25 Q. DO YOU SEE THERE'S A HEADING NUMBER 2, INTELLECTUAL

02:09PM 1 PROPERTY AND BARRIERS TO ENTRY?

02:09PM 2 A. I SHOULD ALSO SAY, THEY TOLD US THEY WAITED UNTIL THEY

02:09PM 3 COULD COVER THE FULL QUEST AND LABCORP MENU BEFORE THEY DID THE

02:09PM 4 WALGREENS PARTNERSHIP.

02:09PM 5 Q. THANK YOU.

02:09PM 6 GOING BACK TO EXHIBIT 1404, DID YOU ALSO PUT TO MS. HOLMES

02:09PM 7 AND MR. BALWANI QUESTIONS ABOUT INTELLECTUAL PROPERTY AND

02:09PM 8 BARRIERS TO ENTRY?

02:09PM 9 A. YES.

02:09PM 10 Q. AND DID THOSE INCLUDE QUESTIONS ABOUT AN UNDERSTANDING OF

02:09PM 11 KEY PATENTS?

02:09PM 12 A. YES.

02:09PM 13 Q. IF WE CAN GO FURTHER DOWN IN THIS, DO YOU SEE THERE'S A

02:09PM 14 HEADING WALGREENS RELATIONSHIP AND COMMERCIAL STRATEGY?

02:09PM 15 DO YOU SEE THAT?

02:10PM 16 A. I DO.

02:10PM 17 Q. AND YOU WROTE, "IS THE WALGREENS RELATIONSHIP EXCLUSIVE?

02:10PM 18 CAN YOU SELL ANALYZERS TO PHYSICIANS?"

02:10PM 19 DO YOU SEE THAT?

02:10PM 20 A. YES.

02:10PM 21 Q. AND THEN IN THE NEXT BULLET, "WHAT IS THE TECHNICAL

02:10PM 22 LIMITATIONS FOR THE EXISTING ANALYZER THAT WILL BE ROLLED OUT

02:10PM 23 AS PART OF THE WALGREENS STRATEGY?"

02:10PM 24 DO YOU SEE THAT?

02:10PM 25 A. I DO, YEAH.

02:10PM 1 Q. AND WHAT DID YOU MEAN BY "ANALYZER"?

02:10PM 2 A. WELL, THIS IS -- SOMETIMES WE TRY TO ASK THE SAME

02:10PM 3 QUESTION, LIKE, SIX, SEVEN DIFFERENT TIMES OR WAYS.

02:10PM 4 SO WE'RE STILL KIND OF ASKING THE SAME -- WE WANT TO BE

02:10PM 5 CRYSTAL CLEAR THAT THERE'S NO AMBIGUITY, THERE'S NO CONFUSION

02:10PM 6 AROUND WHAT THE TECHNOLOGY CAN AND CAN'T DO.

02:10PM 7 SO THIS IS ANOTHER SIMILAR QUESTION TO THE FIRST SECTION

02:10PM 8 THAT WE WENT THROUGH.

02:10PM 9 BUT -- SO WE'RE JUST TRYING TO UNDERSTAND WHAT -- WE'RE

02:10PM 10 REALLY TRYING TO UNDERSTAND, WHAT IS THE BUSINESS MODEL HERE?

02:10PM 11 ARE YOU -- IS WALGREENS YOUR ONLY PARTNER YOU'RE EVER GOING TO

02:10PM 12 HAVE?

02:11PM 13 IS -- ARE YOU ABLE TO WORK WITH OTHER RETAILERS?

02:11PM 14 WOULD YOU EVER CONSIDER SELLING THESE DEVICES TO

02:11PM 15 PHYSICIANS?

02:11PM 16 THE REASON THAT'S AN IMPORTANT QUESTION IS COMPANIES LIKE

02:11PM 17 CEPHEID -- WE TALKED ABOUT THAT A FEW MINUTES AGO -- THAT MAKE

02:11PM 18 THE MOLECULAR TESTING SYSTEMS, THEY HAD MULTIBILLION DOLLAR

02:11PM 19 MARKET CAPS.

02:11PM 20 AND THERANOS HAD TOLD US THAT THEIR TECHNOLOGY WAS

02:11PM 21 DRAMATICALLY BETTER THAN WHAT THOSE COMPANIES WERE ABLE TO DO

02:11PM 22 AT THAT POINT IN TIME.

02:11PM 23 SO WE WANTED TO UNDERSTAND IF THEY WERE THINKING ABOUT

02:11PM 24 SELLING THESE TO -- AS A MEDICAL DEVICE COMPANY.

02:11PM 25 AND THEN ON THE WALGREENS SIDE, YOU KNOW, WHAT, WHAT IS

02:11PM 1 THE NATURE OF THE RELATIONSHIP?

02:11PM 2 SO THOSE WERE ALL REALLY KEY QUESTIONS THAT WE NEEDED TO

02:11PM 3 UNDERSTAND AT THIS POINT.

02:11PM 4 Q. OKAY. YOU WERE ASKING, "WHAT IS THE TECHNICAL LIMITATIONS

02:11PM 5 FOR THE EXISTING ANALYZER THAT WILL BE ROLLED OUT?"

02:12PM 6 AT ANY POINT DID MS. HOLMES OR MR. BALWANI TELL YOU THAT

02:12PM 7 THE THERANOS ANALYZER WAS CURRENTLY BEING USED FOR ONLY A

02:12PM 8 HANDFUL OF TESTS IN THE CLIA LAB?

02:12PM 9 A. NO.

02:12PM 10 Q. AT ANY POINT IN TIME DID THEY TELL YOU THAT THERANOS WAS

02:12PM 11 USING MODIFIED COMMERCIALLY AVAILABLE MACHINES TO PERFORM SOME

02:12PM 12 OF THE FINGERSTICK TESTS IN THE CLIA LAB?

02:12PM 13 A. NO.

02:12PM 14 Q. AT ANY POINT DID THEY TELL YOU THAT THERANOS WAS USING

02:12PM 15 COMMERCIALLY AVAILABLE MACHINES TO DO THE REMAINDER OF TESTS IN

02:12PM 16 THE CLIA LAB?

02:12PM 17 A. NO.

02:12PM 18 Q. WOULD THAT HAVE BEEN RELEVANT TO YOUR INVESTMENT DECISION?

02:12PM 19 A. IT WOULD HAVE BEEN EXTREMELY RELEVANT.

02:12PM 20 Q. HOW SO?

02:12PM 21 A. FIRST OF ALL, IT WOULDN'T HAVE MADE ANY ECONOMIC SENSE. I

02:12PM 22 MEAN, YOU CAN'T BUY EXPENSIVE THIRD PARTY EQUIPMENT AT HIGHER

02:12PM 23 PRICES THAN HUGE COMPANIES LIKE LABCORP AND QUEST, THE COST

02:12PM 24 THAT THEY WOULD PAY TO BUY THOSE BECAUSE THEY'RE A HUGE

02:12PM 25 SUPPLIER -- A HUGE CUSTOMER, AND THEN CHARGE HALF THE PRICE?

02:13PM 1 I MEAN THAT DOESN'T MAKE ANY -- WE WOULD USE THE TERM THAT  
02:13PM 2 DOESN'T REALLY HAVE ANY INDUSTRIAL LOGIC TO IT. SO THAT  
02:13PM 3 WOULDN'T HAVE MADE ANY SENSE.

02:13PM 4 BUT MORE THAN THAT, I MEAN, THE, THE INVESTMENT  
02:13PM 5 OPPORTUNITY HERE WAS BEHIND A TECHNOLOGY THAT WAS CAPABLE OF  
02:13PM 6 DOING EVERYTHING A COMMERCIAL LABORATORY OFFERED, AND TO DO IT  
02:13PM 7 FASTER, TO DO IT MORE CONVENIENTLY, TO DO IT -- TO KEEP TRACK  
02:13PM 8 OF YOUR DATA SO THAT A PATIENT COULD POTENTIALLY DOWN THE ROAD  
02:13PM 9 IDENTIFY HEALTH ISSUES BEFORE THEY BECAME REALLY PROBLEMATIC,  
02:13PM 10 AND WHERE THE PAYOR, WHETHER IT WAS AN INDIVIDUAL PAYING OUT OF  
02:13PM 11 POCKET, WHETHER IT WAS AN INSURANCE COMPANY OR THE FEDERAL  
02:13PM 12 GOVERNMENT WOULD BE SAVING MONEY, AND IN THE PROCESS EXPAND THE  
02:13PM 13 USE OF DIAGNOSTIC TESTING.

02:13PM 14 I THINK WE ALL APPRECIATE HOW IMPORTANT, AFTER THE LAST  
02:13PM 15 COUPLE YEARS OF THE PANDEMIC, HOW IMPORTANT ACCURATE DIAGNOSTIC  
02:14PM 16 INFORMATION IS. THERE JUST ISN'T ENOUGH OF THAT IN OUR SYSTEM.

02:14PM 17 SO, YOU KNOW THAT WAS THE -- THAT'S WHY IT WAS SO OPEN  
02:14PM 18 ENDED AND TRANSFORMATIVE AND EXCITING TO US AS INVESTORS.

02:14PM 19 Q. LET'S MOVE FORWARD TO PAGE 3, IF WE COULD, UNDER THE  
02:14PM 20 WALGREENS RELATIONSHIP AND COMMERCIAL STRATEGY.

02:14PM 21 IN THE FIRST BULLET YOU WROTE, "WHAT DOES THE WALGREENS  
02:14PM 22 SYSTEM COST TO PRODUCE, HOW WILL THAT CHANGE OVER TIME, AND  
02:14PM 23 WHAT IS THE TRANSFER PRICING YOU HAVE AGREED TO?"

02:14PM 24 DID -- IS THIS ANOTHER QUESTION THAT YOU POSED TO  
02:14PM 25 MS. HOLMES AND MR. BALWANI?

02:14PM 1 A. YES.

02:14PM 2 Q. AND WHEN YOU WERE ASKING -- WHY WERE YOU ASKING ABOUT WHAT

02:14PM 3 THE WALGREENS SYSTEM COST TO PRODUCE WAS?

02:14PM 4 A. WE JUST WANTED TO MAKE SURE THAT THE UNIT ECONOMICS TO

02:14PM 5 BOTH THERANOS AND WALGREENS MADE SENSE, THAT BOTH COMPANIES

02:14PM 6 COULD BENEFIT FROM THIS TECHNOLOGY.

02:15PM 7 AND SO UNDERSTANDING HOW THE ECONOMICS WORKED BETWEEN THE

02:15PM 8 TWO COMPANIES WAS IMPORTANT TO THE DUE DILIGENCE PROCESS.

02:15PM 9 Q. SO IF THERANOS HAD TO BUY SIEMENS MACHINES TO FULFILL SOME

02:15PM 10 OF ITS TESTING, WOULD THAT HAVE BEEN RESPONSIVE TO THIS

02:15PM 11 QUESTION?

02:15PM 12 A. THEY NEVER EXPLAINED -- THEY NEVER TALKED ABOUT BUYING ANY

02:15PM 13 THIRD PARTY EQUIPMENT IN THE CONTEXT OF ANY OF THESE QUESTIONS.

02:15PM 14 SO, YES, IT WOULD HAVE BEEN RELEVANT. IT WOULD HAVE LED

02:15PM 15 TO A WHOLE SERIES OF QUESTIONS. IT WOULD HAVE BEEN IN DIRECT

02:15PM 16 CONFLICT TO THE STATEMENTS THEY HAD ALREADY MADE THAT THERE

02:15PM 17 WERE NO LIMITATIONS, AND THAT THEY COULD REPRODUCE THE WHOLE

02:15PM 18 MENU OF TESTS.

02:15PM 19 SO IT WOULD HAVE RAISED A WHOLE BUNCH OF RED FLAGS AND

02:15PM 20 QUESTIONS AT THAT POINT IN THE DUE DILIGENCE PROCESS.

02:15PM 21 Q. IN THE NEXT BULLET YOU WROTE, "HOW DOES VALIDATION PROCESS

02:15PM 22 WORK AS YOU ROLL THIS OUT? DO ANALYZERS NEED TO BE VALIDATED

02:15PM 23 IN THE FIELD?"

02:16PM 24 AND AGAIN, WHAT DID YOU MEAN BY "ANALYZERS"?

02:16PM 25 A. THIS IS THE MINILAB, THEIR SAMPLE PROCESSING UNIT. THAT'S

02:16PM 1 WHAT ANALYZERS ARE REFERRING TO, THEIR PROPRIETARY SAMPLE  
02:16PM 2 PROCESSING UNIT.

02:16PM 3 Q. AND IF WE CAN ZOOM OUT, PLEASE, MS. WACHS.

02:16PM 4 FURTHER DOWN YOU WROTE, ROUGHLY HALFWAY DOWN, "WHAT IS THE  
02:16PM 5 CAP X FROM THE WALGREENS ROLLOUT? WHAT IS THE INVESTMENT ON  
02:16PM 6 THE THERANOS SIDE? WHAT IS THE WALGREENS INVESTMENT?"

02:16PM 7 WHAT IS CAP X?

02:16PM 8 A. YEAH, YEAH. THAT'S A SHORT TERM THAT WE USED FOR CAPITAL  
02:16PM 9 EXPENDITURES.

02:16PM 10 AND THE WAY THE ACCOUNTING RULES WORK FOR PUBLIC  
02:16PM 11 COMPANIES, YOU HAVE TO -- IF YOU'RE GOING TO SPEND MONEY ON A  
02:16PM 12 NEW BUILDING, OR IF YOU'RE GOING TO BUILD A NEW AREA WITHIN THE  
02:16PM 13 WALGREENS STORE, OR IF YOU'RE GOING TO MAKE A MACHINE LIKE THE  
02:16PM 14 THERANOS PROPRIETARY SAMPLE PROCESSING UNITS, THOSE ARE ALL  
02:17PM 15 CAPITAL -- THOSE AREN'T -- YOU DON'T EXPENSE THOSE THE WAY YOU  
02:17PM 16 MIGHT THINK.

02:17PM 17 THOSE ACTUALLY ARE CAPITALIZED ON THE BALANCE SHEET, AND  
02:17PM 18 THEN OVER SOME PERIOD OF TIME, IT DEPENDS ON KIND OF WHAT THE  
02:17PM 19 ASSET IS, IT MAY BE 2 OR 3 YEARS, IT MAY BE 10 YEARS, IT MAY BE  
02:17PM 20 30 YEARS, YOU DEPRECIATE THAT CAPITAL INVESTMENT.

02:17PM 21 AND THEN THAT'S WHAT FLOWS THROUGH THE INCOME STATEMENT.

02:17PM 22 SO THIS IS IMPORTANT FOR UNDERSTANDING THE LONG-TERM  
02:17PM 23 MARGINS OF THE BUSINESS.

02:17PM 24 BUT AS YOU THINK ABOUT THAT, YOUR CASH OUT OF POCKET IS  
02:17PM 25 HIGHER AS YOU RAMP UP YOUR CAPITAL SPENDING, SO YOU NEED A LOT

02:17PM 1 OF CASH EVEN THOUGH IT DOESN'T FLOW THROUGH THE P&L, THE INCOME  
02:17PM 2 STATEMENT RIGHT AWAY.

02:17PM 3 SO WE WANTED TO UNDERSTAND WHO IS PAYING FOR WHAT; HOW  
02:17PM 4 MUCH CASH YOU'RE GOING TO NEED; HOW MUCH CASH DO YOU NEED ON  
02:17PM 5 THE BALANCE SHEET TO SUCCESSFULLY COMMERCIALIZE THIS PRODUCT IN  
02:17PM 6 THE RETAIL SETTING?

02:17PM 7 AND THEN WHAT IS WALGREENS GOING TO PAY FOR AND WHAT ARE  
02:17PM 8 YOU GOING TO PAY FOR?

02:18PM 9 Q. SO IS THIS YOUR EFFORT TO UNDERSTAND SOME OF THE ECONOMICS  
02:18PM 10 AROUND SOME THE WALGREENS AND THERANOS RELATIONSHIP?

02:18PM 11 A. YES.

02:18PM 12 Q. AND IF THERANOS WERE PURCHASING SIEMENS DEVICES TO FULFILL  
02:18PM 13 THE WALGREENS ROLLOUT, WOULD THAT HAVE BEEN RESPONSIVE TO THIS  
02:18PM 14 QUESTION?

02:18PM 15 A. YES.

02:18PM 16 Q. FURTHER DOWN YOU WROTE, "HOW MANY TESTS DO YOU NEED TO RUN  
02:18PM 17 FOR YOU TO TURN PROFIT ON THE SYSTEM WHEN ACCOUNTING FOR THE  
02:18PM 18 COST OF THE SYSTEM ITSELF?"

02:18PM 19 DO YOU SEE THAT ON THE SECOND BULLET HERE?

02:18PM 20 A. YES.

02:18PM 21 Q. IS THAT ANOTHER EFFORT FOR YOU TO TRY TO UNDERSTAND SOME  
02:18PM 22 OF THE ECONOMICS BEHIND THIS?

02:18PM 23 A. YES, IT IS, AND UNDERSTAND, YOU KNOW, WHAT IS, WHAT IS THE  
02:18PM 24 BREAK EVEN ON -- WHAT ARE THE ACTUAL OPERATING ECONOMICS ON THE  
02:18PM 25 PROPRIETARY TECHNOLOGY.

02:18PM 1 Q. LET'S ZOOM OUT, MS. WACHS.

02:18PM 2 IF WE CAN ZOOM IN ON THE BOTTOM PORTION OF THE PAGE.

02:18PM 3 DO YOU SEE THAT YOU ALSO HAVE QUESTIONS RELATING TO

02:19PM 4 HOSPITAL MARKET, REIMBURSEMENT, AND REGULATORY?

02:19PM 5 A. YES.

02:19PM 6 Q. OKAY. AND YOUR FIRST BULLET UNDER REGULATORY WAS, "WHAT

02:19PM 7 ARE THE LIMITATIONS ON THE SYSTEM FROM THE REGULATORY

02:19PM 8 STANDPOINT?"

02:19PM 9 DO YOU SEE THAT?

02:19PM 10 A. YES.

02:19PM 11 Q. IS THAT A QUESTION THAT YOU PUT TO MS. HOLMES AND

02:19PM 12 MR. BALWANI?

02:19PM 13 A. YES.

02:19PM 14 Q. AND WHAT DID THEY SAY?

02:19PM 15 A. THEY EXPLAINED THAT AS A LAB SERVICE PROVIDER, THEY'RE

02:19PM 16 REGULATED NOT BY THE FDA DIRECTLY, BUT THEY OPERATE UNDER THE

02:19PM 17 CLIA AMENDMENTS.

02:19PM 18 AND THE CLIA AMENDMENTS ARE LAWS THAT WERE PASSED IN THE

02:19PM 19 LATE 1980S THAT SET STANDARDS FOR LABORATORY OPERATIONS, AND IF

02:19PM 20 YOU MEET THOSE STANDARDS, YOU'RE ALLOWED TO BILL THE FEDERAL

02:19PM 21 GOVERNMENT, MEDICARE, MEDICAID -- MEDICARE BEING THE PROGRAM

02:19PM 22 FOR OVER 65, AND MEDICAID BEING THE PROGRAM FOR THE CHILDREN

02:19PM 23 AND SOME OF THE LOWER INCOME OLDER POPULATIONS.

02:20PM 24 SO THEY EXPLAINED THAT THAT WAS THEIR REGULATOR.

02:20PM 25 THEY EXPLAINED THE PROCESS OF HOW THEY ARE REGULATED

02:20PM 1 WITHIN THAT. THEY HAVE TO GO THROUGH A PROFICIENCY TESTING  
02:20PM 2 PROCESS WHERE THEY'RE SENT SAMPLES. THEY HAVE TO MATCH THOSE  
02:20PM 3 SAMPLES ON THE PROPRIETARY TECHNOLOGY.  
02:20PM 4 AND THEY TOLD US THAT THEY HAD BEEN ALREADY DOING THIS AND  
02:20PM 5 THAT THEY HAD REPEATEDLY AND CONSISTENTLY ACCURATELY READ ALL  
02:20PM 6 OF THOSE SAMPLES IN PROFICIENCY TESTING FOR THEIR CLIA LAB.  
02:20PM 7 THEY DID, HOWEVER, SAY THAT THEY WANTED TO PURSUE A MORE  
02:20PM 8 RIGOROUS, HIGHER STANDARD FOR THEIR TECHNOLOGY.  
02:20PM 9 THEY ACTUALLY INTENDED TO FILE FOR FDA APPROVAL FOR ALL OF  
02:20PM 10 THEIR TESTS AND ALL OF THEIR EQUIPMENT, WHICH WAS A HIGHER  
02:20PM 11 STANDARD THAN THE REST OF THE LAB INDUSTRY OPERATED UNDER.  
02:20PM 12 THE REST OF THE LAB INDUSTRY DIDN'T DO THAT. THEY BOUGHT  
02:20PM 13 THIRD PARTY EQUIPMENT. THEY RAN THOSE WITHIN THEIR LABS, AND  
02:21PM 14 THAT WAS A REGULATORY SAFE ZONE TO DO THAT.  
02:21PM 15 THEY WANTED TO GO THROUGH THE WHOLE PROCESS OF GETTING FDA  
02:21PM 16 APPROVAL.  
02:21PM 17 SO THEY EXPLAINED TO US ACTUALLY IN THAT SECOND MEETING  
02:21PM 18 THAT THEY WERE GOING TO GET ALL OF THEIR ASSAYS APPROVED.  
02:21PM 19 AND I THINK -- I REMEMBER MR. BALWANI SAYING NOBODY,  
02:21PM 20 NOBODY IN THIS INDUSTRY HAS EVER FILED THOUSANDS OF ASSAYS WITH  
02:21PM 21 THE FDA, NOBODY.  
02:21PM 22 AND IT WAS IMPORTANT BECAUSE THIS WAS GOING TO BE -- FOR  
02:21PM 23 THE CONSUMER, FOR THE PHYSICIAN, YOU KNOW, THIS WOULD BE A REAL  
02:21PM 24 IMPORTANT STAMP OF APPROVAL GETTING FDA APPROVAL FOR ALL OF  
02:21PM 25 THESE.

02:21PM 1 THEY DIDN'T NEED THAT TO OPERATE THE BUSINESS, BUT IT WAS  
02:21PM 2 SOMETHING THAT THEY INTENDED TO DO ANYWAYS.  
02:21PM 3 SO THAT WAS KIND OF THE SUBSTANCE OF THE CONVERSATION  
02:21PM 4 AROUND THIS.  
02:21PM 5 Q. YOU MENTIONED SOMETHING CALLED PROFICIENCY TESTING.  
02:21PM 6 DID MS. HOLMES AND MR. BALWANI TELL YOU THAT THEY WERE  
02:21PM 7 SENDING THEIR SAMPLES TO SOME OUTSIDE PROFICIENCY TESTING  
02:22PM 8 PROVIDER?  
02:22PM 9 A. NO. WELL, THEY TOLD US THAT IN 2000 -- LATE 2015 OR 2016  
02:22PM 10 AFTER THEY HAD HAD A MAJOR REGULATORY PROBLEM DEVELOP, THEY DID  
02:22PM 11 ADMIT THAT I THINK PUBLICLY, AND THAT WAS THE FIRST TIME THAT  
02:22PM 12 WE HAD HEARD OF THAT.  
02:22PM 13 SO AT NO POINT IN THE DUE DILIGENCE PROCESS DID THEY  
02:22PM 14 EXPLAIN THAT TO US.  
02:22PM 15 Q. OKAY. LET'S GO TO PAGE 4. THERE ARE SOME QUESTIONS FOR  
02:22PM 16 FINANCIAL MODEL/PROJECTIONS.  
02:22PM 17 DO YOU SEE THAT?  
02:22PM 18 A. YES.  
02:22PM 19 Q. AND YOU WROTE, "WHAT IS THE COST OF THE WALGREENS ROLLOUT?  
02:22PM 20 "WHAT IS THE CURRENT COST OF A WALGREENS ANALYZER, HOW  
02:22PM 21 WILL THAT CHANGE OVER TIME?  
02:22PM 22 "WHAT ARE THE OTHER SIGNIFICANT OPERATING COSTS AND HOW  
02:22PM 23 WILL THEY CHANGE OVER TIME?"  
02:22PM 24 DO YOU SEE THOSE QUESTIONS?  
02:22PM 25 A. YES.

02:22PM 1 Q. AND IS THIS ADDITIONAL EFFORT ON YOUR PART TO TRY TO  
02:23PM 2 UNDERSTAND THE ECONOMICS OF WHAT THERANOS IS OFFERING?  
02:23PM 3 A. YES. AND THERE'S ANOTHER REASON WHY WE WERE ASKING THESE  
02:23PM 4 QUESTIONS IS WE WERE MODELING -- WE WERE BUILDING OUR OWN  
02:23PM 5 FINANCIAL MODEL.  
02:23PM 6 WE WERE FORECASTING THE SALES, AN OBVIOUS THING TO DO, BUT  
02:23PM 7 WE WANTED TO MAKE SURE THAT THE COST OF GENERATING THOSE  
02:23PM 8 SALES -- THAT THEY NEEDED ANALYZERS IN ORDER TO GENERATE THOSE  
02:23PM 9 REVENUES, SO WE WANTED TO MAKE SURE -- WE WANTED TO BE CRYSTAL  
02:23PM 10 CLEAR, WHAT DO YOU NEED TO ACTUALLY SPEND? HOW MANY ANALYZERS  
02:23PM 11 DO YOU NEED TO MAKE? WHAT EQUIPMENT DO YOU NEED TO BUY IN  
02:23PM 12 ORDER TO DELIVER THE REVENUE THAT YOU'VE DESCRIBED IN THIS  
02:23PM 13 MEETING THAT YOU'VE -- THAT YOU'RE GOING TO -- YOU'RE GOING  
02:23PM 14 TO -- YOU EXPECT TO GENERATE OVER THE LIFE OF THIS PARTNERSHIP?  
02:23PM 15 AND SO WE REALLY WANTED TO -- AS WE WERE MODELING THIS  
02:23PM 16 OUT, WE WANTED TO UNDERSTAND EXACTLY WHAT THE CASH NEEDS OF THE  
02:23PM 17 BUSINESS ARE AS THEY RAMPED THE REVENUE.  
02:23PM 18 IT WASN'T JUST THE RETAIL SIDE. THEY WERE ALSO USING THE  
02:23PM 19 SAME PROPRIETARY SAMPLE PROCESSING UNITS FOR THE HOSPITAL SIDE  
02:24PM 20 AND THE HOSPITAL BUSINESS WHERE THEY WERE GOING TO BE REPLACING  
02:24PM 21 THE HOSPITAL LABORATORIES OR DOING THE, THE INFECTIOUS  
02:24PM 22 DISEASE -- THE INFECTION TESTING.  
02:24PM 23 AND THEN ALSO THEY WERE GOING TO BE PROVIDING COLLECTION  
02:24PM 24 DEVICES TO PHYSICIAN OFFICES.  
02:24PM 25 SO WE WANTED TO MAKE SURE THAT WE HAD A VERY ACCURATE

02:24PM 1 SENSE OF WHAT THE CASH THEY WERE GOING TO HAVE TO INVEST TO  
02:24PM 2 DELIVER ENOUGH EQUIPMENT TO GENERATE THE TYPE OF REVENUE THAT  
02:24PM 3 THEY HOPED TO GENERATE.  
02:24PM 4 SO -- AND THAT SORT OF LEADS TO THE, YOU KNOW, HOW MUCH  
02:24PM 5 CASH DO YOU NEED IN THE BUSINESS TO GET TO BREAK EVEN, TO  
02:24PM 6 EVENTUALLY BE PROFITABLE?  
02:24PM 7 AND AS AN INVESTOR, THAT'S A STANDARD QUESTION THAT YOU  
02:24PM 8 WOULD WANT TO BE ABLE TO -- OR A STANDARD THING THAT WE WOULD  
02:24PM 9 WANT TO UNDERSTAND IN ANY INVESTMENT.  
02:24PM 10 Q. IF THERANOS HAD BEEN USING THIRD PARTY EQUIPMENT, SAY FROM  
02:25PM 11 SIEMENS, WOULD THAT HAVE BEEN RESPONSIVE TO THE QUESTIONS THAT  
02:25PM 12 YOU'RE ASKING HERE ABOUT THE COST OF THE ANALYZER?  
02:25PM 13 A. YOU WOULD HAVE THOUGHT THAT WOULD HAVE COME UP AT THIS  
02:25PM 14 STAGE OF THE MEETING, YES.  
02:25PM 15 Q. DID IT EVER COME UP?  
02:25PM 16 A. NO.  
02:25PM 17 Q. YOU ALSO WROTE, "WHAT ARE GM ON THE ANALYZERS, THE TESTS?"  
02:25PM 18 DO YOU SEE THAT?  
02:25PM 19 A. YES.  
02:25PM 20 Q. AND WHAT IS GM?  
02:25PM 21 A. GM IS ANOTHER ONE OF THESE SHORTHAND TERMS. THAT'S  
02:25PM 22 REFERRING TO GROSS MARGIN, AND GROSS MARGIN IS JUST THE COST OF  
02:25PM 23 THE MACHINE, WHAT YOU SELL THE MACHINE FOR VERSUS WHAT IT COSTS  
02:25PM 24 TO MAKE THE MACHINE, THAT WOULD BE YOUR GROSS MARGIN.  
02:25PM 25 AND SO WE'RE TRYING TO UNDERSTAND THE COST, LIKE, WHAT IS

02:25PM 1 THE COST OF MAKING THESE MACHINES, WHICH THEY TOLD US WAS  
02:25PM 2 SOMETHING AROUND \$40,000, MAYBE A LITTLE HIGHER IN THAT ZIP  
02:26PM 3 CODE, AND THEY WERE GOING TO DRIVING THAT COST DOWN TO \$10,000  
02:26PM 4 TO \$15,000.

02:26PM 5 AND THEN ALSO, WHAT ARE THE COSTS OF MAKING THE ASSAYS,  
02:26PM 6 THE TESTS THEMSELVES? THAT ALSO IS NOT A COSTLESS PROCESS  
02:26PM 7 EITHER.

02:26PM 8 SO WE WANTED TO UNDERSTAND THE MARGINS.

02:26PM 9 AND, YOU KNOW, THIS FEEDS BACK INTO THE HIGHER THE  
02:26PM 10 MARGINS, THE LESS CASH YOU'RE GOING TO NEED OVER THE NEXT  
02:26PM 11 COUPLE OF YEARS TO BREAK EVEN IN PROFITABILITY.

02:26PM 12 SO I WAS JUST TRYING TO UNDERSTAND THE NATURE OF THE  
02:26PM 13 BUSINESS.

02:26PM 14 Q. AND DURING THIS MEETING IN JANUARY, DID MR. BALWANI MAKE  
02:26PM 15 STATEMENTS TO YOU ABOUT THE GM OF THE ANALYZERS?

02:26PM 16 A. WELL, THE, THE -- HE EXPLAINED THAT -- HE FOCUSED ON THE  
02:26PM 17 COST OF THE ANALYZERS, BECAUSE THEY WEREN'T GOING TO BE SELLING  
02:26PM 18 THE ANALYZERS THEMSELVES, THEY WERE GOING TO BE USING THEM FOR  
02:26PM 19 THEIR OWN LABORATORY.

02:26PM 20 SO IT WAS MORE OF THE GROSS MARGIN ON THE LABORATORY  
02:26PM 21 SERVICES BUSINESS OVERALL, SO USING THESE PROPRIETARY PIECES OF  
02:26PM 22 TECHNOLOGY THAT THEY WERE MAKING THEMSELVES TO PROVIDE A COST  
02:26PM 23 ADVANTAGE AGAINST OTHER LABORATORIES THAT ARE BUYING THIRD  
02:27PM 24 PARTY EQUIPMENT.

02:27PM 25 AND THEN OBVIOUSLY CHARGING -- THE REVENUE THAT YOU'RE

02:27PM 1 GETTING IS THE PRICE THAT YOU CHARGE THE RETAIL CUSTOMER, WHICH  
02:27PM 2 IN THIS CASE WAS 50 PERCENT OF THE MEDICARE PRICE.  
02:27PM 3 SO THAT WAS YOUR REVENUE.  
02:27PM 4 THE COST WAS THE ANALYZERS THAT THEY WERE MAKING, AND THEN  
02:27PM 5 WHAT WAS LEFT OVER WOULD HAVE BEEN THE GROSS MARGIN ON THE  
02:27PM 6 RETAIL BUSINESS.  
02:27PM 7 NOW, THAT SAME MATH, THEY GAVE US IN THAT FIRST MEETING --  
02:27PM 8 IN THAT SECOND MEETING, THEY GAVE US MARGINS FOR ALL OF THE  
02:27PM 9 BUSINESSES. THEY GAVE US MARGINS FOR THE RETAIL BUSINESS, THE  
02:27PM 10 HOSPITAL BUSINESS, THE PHYSICIAN BUSINESS, THE HOSPITAL  
02:27PM 11 REPLACEMENT BUSINESS. I THINK THEY EVEN HAD A MARGIN FOR THE  
02:27PM 12 PHARMA SERVICE BUSINESS THEY GAVE US IN THAT FIRST MEETING.  
02:27PM 13 Q. AND DID MR. BALWANI WALK YOU THROUGH ANY TYPE OF FINANCIAL  
02:27PM 14 MODEL THAT THERANOS HAD PREPARED?  
02:27PM 15 A. THAT WAS THE SECOND MEETING WHERE WE SAW THEIR FINANCIAL  
02:27PM 16 MODEL FOR THE FIRST TIME, YES.  
02:27PM 17 Q. YOU USED THE WORD "MINILAB" EARLIER. DID MS. HOLMES AND  
02:28PM 18 MR. BALWANI DRAW ANY CONNECTION BETWEEN THE MINILAB AND  
02:28PM 19 MAINFRAME COMPUTERS?  
02:28PM 20 A. YES. THIS WAS TOWARDS THE EARLIER PART OF OUR FIRST  
02:28PM 21 MEETING. THEY WANTED TO BE VERY CLEAR THAT THIS TECHNOLOGY WAS  
02:28PM 22 NOT ANOTHER POINT OF CARE TEST.  
02:28PM 23 POINT OF CARE TEST IS KIND OF LIKE THE HOME PREGNANCY TEST  
02:28PM 24 OR NOW THE HOME COVID TEST. IT DOES ONE THING. YOU CAN BUY IT  
02:28PM 25 AT THE DRUG STORE. IT'S LOW TECHNOLOGY BUT WORKS PRETTY WELL.

02:28PM 1 BUT THEY, THEY -- I THINK WE ACTUALLY MADE THE MISTAKE OF  
02:28PM 2 CALLING IT A POINT OF CARE TESTING PLATFORM.  
02:28PM 3 AND THEY IMMEDIATELY STOPPED, NO, NO, NO, NO. THIS IS NOT  
02:28PM 4 A POINT OF CARE PRODUCT. WE HAVE TAKEN THE ENTIRE LAB AND  
02:28PM 5 MINIATURIZED IT. THIS IS A MINILAB, AND THAT HAS PROFOUND  
02:28PM 6 IMPLICATIONS FOR HOW WE WILL PROVIDE LABORATORY SERVICES GOING  
02:29PM 7 FORWARD.  
02:29PM 8 THIS IS WHERE WE GOT INTO THE, YOU KNOW, WE CAN SERVICE  
02:29PM 9 THE ENTIRE PHOENIX MARKET IN A 200 SQUARE FOOT FACILITY.  
02:29PM 10 BUT THE CONCEPT WAS, YOU KNOW, THIS IS PC'S VERSUS  
02:29PM 11 MAINFRAMES. THIS IS, YOU KNOW, THE OLD WAY OF DOING IT VERSUS  
02:29PM 12 THE NEW WAY OF DOING IT. THIS IS A DISTRIBUTED INTERCONNECTED  
02:29PM 13 NETWORK OF DEVICES.  
02:29PM 14 SO, YEAH, THAT WAS A VERY IMPORTANT POINT THAT THEY MADE  
02:29PM 15 IN THAT SECOND MEETING.  
02:29PM 16 Q. LET ME DRAW YOUR ATTENTION, MR. GROSSMAN, TO WHAT HAS BEEN  
02:29PM 17 MARKET AS EXHIBIT 1422.  
02:29PM 18 THE COURT: WHILE MR. GROSSMAN FINDS THAT, LADIES  
02:29PM 19 AND GENTLEMEN, WOULD YOU STAND UP AND STRETCH FOR JUST A  
02:29PM 20 MOMENT.  
02:29PM 21 (STRETCHING.)  
02:30PM 22 MR. LEACH: MAY I INQUIRE?  
02:30PM 23 Q. MR. GROSSMAN, IS THIS AN EMAIL EXCHANGE BETWEEN YOU AND  
02:30PM 24 MR. BALWANI DATED JANUARY 14TH, 2014?  
02:30PM 25 A. IF I COULD JUST HAVE A MINUTE TO REVIEW IT?

02:30PM 1 Q. SURE.

02:30PM 2 A. YES, IT IS.

02:30PM 3 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS

02:30PM 4 EXHIBIT 1422.

02:30PM 5 MS. WALSH: NO OBJECTION.

02:30PM 6 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

02:30PM 7 (GOVERNMENT'S EXHIBIT 1422 WAS RECEIVED IN EVIDENCE.)

02:30PM 8 BY MR. LEACH:

02:30PM 9 Q. AND IF WE CAN START ON PAGE 2, MS. WACHS.

02:31PM 10 DOWN AT THE BOTTOM, MR. GROSSMAN, DO YOU SEE AN EMAIL

02:31PM 11 DATED JANUARY 10TH, 2014 FROM YOU TO MR. BALWANI?

02:31PM 12 A. YES.

02:31PM 13 Q. AND YOU WROTE, "THANKS AGAIN FOR THE TIME YOU SPENT WITH

02:31PM 14 OUR TEAM WALKING US THROUGH THE THERANOS STORY."

02:31PM 15 DO YOU SEE THAT?

02:31PM 16 A. YES.

02:31PM 17 Q. IS THAT A REFERENCE TO THE MEETING THAT YOU HAD WITH

02:31PM 18 MS. HOLMES AND MR. BALWANI IN PALO ALTO?

02:31PM 19 A. YES.

02:31PM 20 Q. YOU THEN WROTE, "WE WILL LIKELY NEED A FEW DAYS TO PROCESS

02:31PM 21 EVERYTHING WE LEARNED TODAY. ONE THING THAT WOULD BE

02:31PM 22 ESPECIALLY HELPFUL TO OUR DUE DILIGENCE PROCESS IS HAVING

02:31PM 23 ACCESS TO THE FINANCIAL MODEL WE REVIEWED WITH YOU TODAY."

02:31PM 24 DO YOU SEE THAT?

02:31PM 25 A. YES.

02:31PM 1 Q. WHAT DID YOU MEAN BY THAT?

02:31PM 2 A. WE WANTED, WE WANTED A WORKABLE MICROSOFT EXCEL VERSION OF

02:31PM 3 THE MODEL THAT THEY SHOWED US ON I THINK IT WAS A LAPTOP IN

02:31PM 4 THAT, IN THAT MEETING, SECOND MEETING IN EARLY JANUARY.

02:31PM 5 Q. OKAY. AND IF WE COULD ZOOM OUT, THERE'S A REPLY FROM

02:32PM 6 MR. BALWANI AT THE TOP.

02:32PM 7 DO YOU SEE WHERE HE COMMITS TO SENDING YOU THE MODEL OVER

02:32PM 8 THE WEEKEND?

02:32PM 9 A. YES.

02:32PM 10 Q. OKAY. AND LET'S GO TO PAGE 1, MS. WACHS.

02:32PM 11 AND IF WE CAN FOCUS ON THE BOTTOM PORTION OF THE EMAIL

02:32PM 12 FROM MR. GROSSMAN ON MONDAY, JANUARY 13TH.

02:32PM 13 YOU WROTE AGAIN, "SUNNY,

02:32PM 14 "WE ARE VERY INTERESTED IN MOVING FORWARD."

02:32PM 15 DO YOU SEE THAT?

02:32PM 16 A. YES.

02:32PM 17 Q. AND THAT WAS ACCURATE AT THE TIME?

02:32PM 18 A. YES.

02:32PM 19 Q. IN THE THIRD PARAGRAPH YOU WROTE, "BEYOND THAT THE WAG

02:32PM 20 ENDORSEMENT OBVIOUSLY SPEAKS TO THE STRENGTH AND ROBUSTNESS OF

02:32PM 21 THE TECHNOLOGY PLATFORM. AS DOES THE UNH AGREEMENT YOU HAVE IN

02:32PM 22 PLACE. DO YOU THINK WE COULD HAVE A QUICK CONVERSATION WITH

02:32PM 23 SOMEBODY AT WAG AND UNH WHO CAN SPEAK SPECIFICALLY TO THE

02:32PM 24 TECHNICAL DUE DILIGENCE THEY PERFORMED?"

02:32PM 25 DO YOU SEE THAT?

02:33PM 1 A. YES.

02:33PM 2 Q. AND WHAT IS UNH?

02:33PM 3 A. UNH IS THE SHORTHAND, IT'S THE STOCK SYMBOL TICKER FOR

02:33PM 4 UNITED HEALTH CARE.

02:33PM 5 Q. AND WAG IS A REFERENCE TO WALGREENS?

02:33PM 6 A. THAT'S CORRECT. THAT'S A REFERENCE -- THAT'S THE TICKER

02:33PM 7 AT THE TIME. IT'S ACTUALLY CHANGED. IT'S NOW WBA.

02:33PM 8 BUT AT THE TIME IT WAS WAG WAS THE TICKER FOR WALGREENS.

02:33PM 9 Q. AND WHY WERE YOU INTERESTED IN SPEAKING TO SOMEBODY AT WAG

02:33PM 10 AND UNH?

02:33PM 11 A. WELL, THEY -- IN THE SECOND MEETING, THERANOS EXPLAINED TO

02:33PM 12 US THAT THEY HAD CONTRACTS, THEY HAD AGREEMENTS WITH BOTH THE

02:33PM 13 BLUE CROSS, BLUE SHIELD ORGANIZATION, THAT'S THE NON FOR

02:33PM 14 PROFIT -- EVERY STATE HAS A NON FOR PROFIT

02:33PM 15 BLUE CROSS, BLUE SHIELD HEALTH PLAN. THERE'S A PARENT

02:33PM 16 ORGANIZATION THAT SITS ABOVE THAT, AND THEY EXPLAINED THAT THAT

02:34PM 17 PARENT ORGANIZATION HAD INVESTED IN THERANOS AND THAT, AS A

02:34PM 18 RESULT OF THE RELATIONSHIP WITH THE PARENT

02:34PM 19 BLUE CROSS, BLUE SHIELD, THEY HAD CONTRACTS WITH ALL OF THE --

02:34PM 20 COMMERCIAL CONTRACTS TO BE REIMBURSED TO BE PAID FOR LAB

02:34PM 21 SERVICES WITH ALL OF THE BLUES PLANS.

02:34PM 22 AND THEN THEY EXPLAINED THAT THEY HAD A SIMILAR CONTRACT

02:34PM 23 WITH UNITED HEALTH CARE, WHICH FOR US WAS VERY SURPRISING

02:34PM 24 BECAUSE UNITED HEALTH CARE GOES THROUGH THIS REALLY PUBLIC

02:34PM 25 PROCESS OF BIDDING THEIR LAB SERVICES OUT TO ONE PROVIDER, AND

02:34PM 1 I THINK AT THIS POINT LABCORP WAS THE ONE PROVIDER THAT THEY  
02:34PM 2 CHOSE.

02:34PM 3 AND SO WE WERE SURPRISED THAT THEY WERE ABLE TO GET A  
02:34PM 4 CONTRACT WITH UNITED, AND THE COMPANY EXPLAINED TO US THAT IT  
02:34PM 5 WAS BECAUSE THEIR TECHNOLOGY WAS SO DIFFERENT, IT WAS SO MUCH  
02:34PM 6 BETTER, FASTER.

02:34PM 7 YOU KNOW, THERE WAS A CONTRACTUAL OUT. IT ALLOWED UNITED  
02:34PM 8 HEALTH CARE TO CONTRACT WITH THEM.

02:34PM 9 AND THAT THERE WAS A LOT OF SLIPPAGE, THERE WAS A LOT OF  
02:35PM 10 STUFF THAT DIDN'T GO THROUGH LABCORP THAT COST UNITED HEALTH  
02:35PM 11 CARE MORE MONEY, THEY HAD TO PAY HIGHER RATES FOR THAT.

02:35PM 12 SO WE WANTED TO SPEAK TO SOMEBODY AT UNITED HEALTH CARE  
02:35PM 13 THAT WAS INVOLVED IN THE DEAL. IT WAS A PUBLIC COMPANY, SO WE  
02:35PM 14 CAN'T JUST -- YOU KNOW, WE HAVE TO BE CAREFUL FROM A COMPLIANCE  
02:35PM 15 STANDPOINT. WE CAN'T JUST BE CALLING RANDOM PEOPLE UP.

02:35PM 16 WE HAVE TO BE VERY CAREFUL ABOUT THE RULES OF HOW YOU  
02:35PM 17 INTERACT WITH PUBLIC COMPANIES.

02:35PM 18 SO WE WERE HOPING THAT THERANOS WOULD PROVIDE US SOMEBODY  
02:35PM 19 AT UNITED HEALTH CARE WHO COULD SPEAK TO THEIR PROCESS, HOW  
02:35PM 20 THEY CAME TO FIND THE COMPANY, HOW THIS IS GOING TO WORK WITH  
02:35PM 21 UNITED HEALTH CARE FROM THAT STANDPOINT.

02:35PM 22 OBVIOUSLY WALGREENS WAS THE BIG RETAIL PARTNERSHIP, AND AT  
02:35PM 23 THAT POINT IN TIME IT HAD BEEN PUBLICLY ANNOUNCED IN THE FALL  
02:35PM 24 OF '13, AND SO WE WANTED TO SPEAK TO SOMEONE AT WALGREENS  
02:35PM 25 BESIDES THE CEO, CFO, THOSE C-SUITE EXECUTIVES WHO HAD MADE

02:36PM 1 PUBLIC STATEMENTS.

02:36PM 2 WE WERE LOOKING FOR SOMEONE KIND OF MIDDLE OF THE

02:36PM 3 ORGANIZATION THAT WAS MORE INVOLVED IN BUSINESS DEVELOPMENT OR

02:36PM 4 HAD BEEN KIND OF INVOLVED IN THIS, IN THE DEAL, PUTTING THE

02:36PM 5 DEAL TOGETHER.

02:36PM 6 Q. HOW DID MR. BALWANI RESPOND TO THIS REQUEST TO SPEAK TO

02:36PM 7 SOMEBODY FROM WAG AND UNITED HEALTH CARE?

02:36PM 8 A. YEAH. HE, HE -- SO THIS WAS A PHONE CALL SUBSEQUENT TO

02:36PM 9 THIS EMAIL, AND HE WAS -- HE WAS VERY UNCOMFORTABLE WITH EITHER

02:36PM 10 OF THOSE, EITHER OF THOSE.

02:36PM 11 HE, HE FELT THAT IT WOULD LOOK WEIRD, IT WOULD -- THEY HAD

02:36PM 12 A GREAT RELATIONSHIP, AND IT WOULD MAKE THEM LOOK BAD. YOU

02:36PM 13 KNOW, HE WAS UNCOMFORTABLE. THEY WOULDN'T WANT TO TALK TO

02:36PM 14 INVESTORS.

02:36PM 15 AND SO, YOU KNOW, HE BASICALLY SHUT IT DOWN. HE SAID, NO,

02:36PM 16 WE'RE NOT WILLING TO DO THAT.

02:36PM 17 HE DID OFFER TO SHOW US THE SIGNATURE PAGE OF THE

02:37PM 18 WALGREENS -- I'M SORRY, THE UNITED HEALTH CARE CONTRACT THAT

02:37PM 19 THEY HAD SIGNED SO THAT HE COULD PROVE TO US THAT THERE WAS IN

02:37PM 20 FACT AN ACTUAL DOCUMENT.

02:37PM 21 SO HE WAS WILLING TO BRING THAT INTO A CONFERENCE ROOM

02:37PM 22 THAT WE COULD SEE.

02:37PM 23 BUT HE, HE -- YOU KNOW, HE WAS UNWILLING TO GRANT US THIS,

02:37PM 24 EITHER OF THESE REQUESTS.

02:37PM 25 Q. AND THIS IS DATED JANUARY 13TH, 2014.

02:37PM 1 LET ME MOVE FORWARD IN TIME TO JANUARY 17TH, 2014, AND  
02:37PM 2 DRAW YOUR ATTENTION TO WHAT WE HAVE MARKED AS EXHIBIT 4077.  
02:37PM 3 DO YOU HAVE THAT IN FRONT OF YOU?  
02:37PM 4 A. YEAH. SORRY.  
02:37PM 5 Q. IS THIS AN EMAIL FROM MR. BALWANI TO YOU DATED  
02:37PM 6 JANUARY 17TH, 2014?  
02:38PM 7 A. YES.  
02:38PM 8 Q. AND DOES IT ATTACH A LENGTHY POWERPOINT WITH INFORMATION  
02:38PM 9 RELATING TO THERANOS?  
02:38PM 10 A. YES, IT DOES.  
02:38PM 11 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS  
02:38PM 12 EXHIBIT 4077.  
02:38PM 13 MS. WALSH: NO OBJECTION.  
02:38PM 14 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.  
02:38PM 15 (GOVERNMENT'S EXHIBIT 4077 WAS RECEIVED IN EVIDENCE.)  
02:38PM 16 MR. LEACH: LET'S ZOOM IN ON THE TOP HALF, IF WE  
02:38PM 17 COULD, MS. WACHS.  
02:38PM 18 Q. MR. GROSSMAN, DO YOU SEE WHERE MR. BALWANI WROTE, "BRIAN.  
02:38PM 19 "ATTACHED PLEASE FIND A PDF WHICH IS A VERY CONFIDENTIAL  
02:38PM 20 SLIDE DECK OF DISCUSSIONS WE HAD."  
02:38PM 21 DO YOU SEE THAT?  
02:38PM 22 A. YES.  
02:38PM 23 Q. "IT ALSO INCLUDES A VERY DETAILED SECTION ON DATA WHICH  
02:38PM 24 ALEX HAD REQUESTED."  
02:38PM 25 IS ALEX A REFERENCE TO MR. RABODZEY?

02:38PM 1 A. YES.

02:38PM 2 Q. AND THEN THERE IS SOME PASSWORD INFORMATION TO OPEN UP THE

02:38PM 3 FILE?

02:38PM 4 A. YES.

02:38PM 5 Q. AND FURTHER BELOW HE SAYS, "WE WILL MAIL YOU THE

02:39PM 6 PROJECTIONS/FINANCIAL MODEL SHORTLY."

02:39PM 7 DO YOU SEE THAT?

02:39PM 8 A. YES.

02:39PM 9 Q. AND THE POWERPOINT THAT IS ATTACHED TO THIS, IS THIS

02:39PM 10 SOMETHING THAT YOU AND YOUR TEAM REVIEWED?

02:39PM 11 A. YES.

02:39PM 12 Q. AND WAS IT RELEVANT TO PFM'S INVESTMENT DECISION?

02:39PM 13 A. YES.

02:39PM 14 Q. OKAY. I'D LIKE TO WALK THROUGH SOME OF THE PAGES OF THE

02:39PM 15 POWERPOINT WITH YOU IF WE COULD.

02:39PM 16 A. OKAY.

02:39PM 17 Q. AND LET'S JUST START ON PAGE 3.

02:39PM 18 A. DO YOU WANT ME TO FLIP OR DO YOU WANT TO PUT IT ON THE

02:39PM 19 SCREEN?

02:39PM 20 Q. WE'LL PUT IT ON THE SCREEN, AND IF YOU WANT TO FLIP

02:39PM 21 THROUGH, YOU'RE ALSO ABLE TO DO THAT.

02:39PM 22 DO YOU SEE THE TITLE THERANOS?

02:39PM 23 A. YES.

02:39PM 24 Q. AND IT SAYS, "THIS PRESENTATION AND ITS CONTENTS ARE

02:39PM 25 THERANOS PROPRIETARY AND CONFIDENTIAL," BELOW?

02:39PM 1 A. YES.

02:39PM 2 Q. OKAY. LET'S DISPLAY IF WE COULD, MS. WACHS, PAGE 67.

02:40PM 3 MR. GROSSMAN, DO YOU SEE IN THE UPPER LEFT THERE'S THE

02:40PM 4 TITLE -- WELL, IN THE TOP LEFT IT SAYS, OVERVIEW: THERANOS

02:40PM 5 SYSTEMS.

02:40PM 6 AND THEN TO THE LEFT IN A BOX OF THERANOS SYSTEMS, THERE'S

02:40PM 7 AN IMAGE OF TWO DEVICES.

02:40PM 8 DO YOU SEE THAT?

02:40PM 9 A. YES.

02:40PM 10 Q. AND WHAT DID YOU UNDERSTAND THOSE TO BE?

02:40PM 11 A. THOSE WERE THE MINILABS. THE ONE ON THE LEFT WAS THE

02:40PM 12 MINILAB, THE RETAIL PRODUCT THAT THEY WERE BUILDING AND USING

02:40PM 13 IN THEIR CLIA LABS.

02:40PM 14 I THINK THE ONE ON THE RIGHT WAS THE OLDER, OLDER VERSION

02:40PM 15 THAT THEY USED IN CLINICAL TRIALS I THINK.

02:40PM 16 Q. AND DO THESE BEAR RESEMBLANCE TO THE DEVICES THAT

02:40PM 17 MR. BALWANI SHOWED YOU?

02:40PM 18 A. YES.

02:40PM 19 Q. AT ANY POINT IN TIME DID MR. BALWANI SHOW YOU SIEMENS

02:40PM 20 MACHINES?

02:40PM 21 A. NO.

02:40PM 22 Q. DID HE EVER TELL YOU THAT THERANOS SYSTEMS INCLUDED

02:40PM 23 SIEMENS MACHINES?

02:40PM 24 A. NO.

02:40PM 25 Q. TO THE RIGHT THERE'S AN IMAGE -- OR THE WORDS "CARTRIDGES"

02:40PM 1 AND THEN AN IMAGE.

02:41PM 2 WHAT DID YOU UNDERSTAND THIS TO BE?

02:41PM 3 A. THESE WERE THE -- THESE ARE THE ASSAYS. THESE ARE THE,

02:41PM 4 THESE ARE THE REAL ESTATE WHERE THE ASSAYS RESIDE, WHICH ARE

02:41PM 5 THEN LOADED INTO THE ANALYZERS.

02:41PM 6 Q. AND TO THE RIGHT, OR IN THE BOX BELOW, IT SAYS THERANOS

02:41PM 7 SYSTEMS: BACKEND ANALYTICAL INFRASTRUCTURE.

02:41PM 8 DO YOU SEE THAT?

02:41PM 9 A. YES.

02:41PM 10 Q. AND WHAT DID YOU UNDERSTAND TO BE CONVEYED HERE?

02:41PM 11 A. THIS IS THE WHOLE IDEA THAT THEY'RE GOING TO ACTUALLY CARE

02:41PM 12 ABOUT THE PATIENT AND THE DATA THAT THEY GENERATE FROM PATIENTS

02:41PM 13 AND USE IT -- FIRST OF ALL, KEEP TRACK OF IT SO THAT, AS A

02:41PM 14 PATIENT, YOU COULD HAVE ACCESS TO YOUR DATA OVER TIME

02:41PM 15 CONVENIENTLY THROUGH A MOBILE APP OR A WEB PAGE.

02:41PM 16 AND THEN THEY WERE GOING TO DEVELOP ANALYTICS AROUND THAT

02:42PM 17 DATA THAT HELPED PROMOTE BETTER HEALTH OUTCOMES THAT COULD

02:42PM 18 IDENTIFY SOMEBODY WHO IS LIKELY TO HAVE A MEDICAL CONDITION

02:42PM 19 BEFORE IT WOULD SHOW UP IN THE CURRENT MEDICAL DIAGNOSTIC

02:42PM 20 PARADIGM.

02:42PM 21 AND SO THAT REQUIRED A WHOLE -- AND ACTUALLY,

02:42PM 22 MR. BALWANI -- THIS WAS PARTICULARLY AN IMPORTANT AREA TO HIM

02:42PM 23 COMING FROM THE SOFTWARE WORLD AND HIS TIME I THINK AT

02:42PM 24 MICROSOFT.

02:42PM 25 SO THIS WAS AN IMPORTANT ASPECT OF THEIR LONGER TERM

02:42PM 1 STRATEGY.

02:42PM 2 Q. AND LET'S GO BACK ONE PAGE TO PAGE 66.

02:42PM 3 DO YOU SEE THE HEADING PRODUCTS, MR. GROSSMAN?

02:42PM 4 A. YES.

02:42PM 5 Q. AND THE FIRST TEXT UNDERNEATH THAT SAYS, "DEVICE."

02:43PM 6 "MINILAB AND 4S FOR AUTOMATED PROCESSING."

02:43PM 7 DO YOU SEE THAT?

02:43PM 8 A. YES.

02:43PM 9 Q. AND IS THAT CONSISTENT WITH STATEMENTS THAT MR. BALWANI

02:43PM 10 AND MS. HOLMES MADE TO YOU ABOUT THE DEVICE THAT THERANOS WAS

02:43PM 11 USING?

02:43PM 12 A. YES.

02:43PM 13 Q. AT ANY POINT IN TIME DID THEY MENTION SIEMENS MACHINES?

02:43PM 14 A. NO.

02:43PM 15 Q. BENEATH THAT IT SAYS, "CARTRIDGE."

02:43PM 16 "AUTOMATED CONSUMABLES FOR 75 PLUS ASSAYS SIMULTANEOUSLY

02:43PM 17 ACROSS ALL SAMPLE TYPES (BLOOD, URINE, TISSUE, ET CETERA)."

02:43PM 18 AND DID YOU UNDERSTAND THAT THERANOS WAS USING AUTOMATED

02:43PM 19 CONSUMABLES FOR 75 PLUS ASSAYS AT THE TIME?

02:43PM 20 A. THEY ACTUALLY TOLD US IN OUR MEETING THAT IT WAS 75, BUT,

02:43PM 21 YES, THAT'S KIND OF ROUGHLY -- THAT'S ROUGHLY ACCURATE.

02:43PM 22 Q. OKAY. AND THEN THERE'S A LINE FOR "BLOOD COLLECTION

02:43PM 23 DEVICES."

02:43PM 24 DO YOU SEE THAT?

02:43PM 25 A. YES.

02:43PM 1 Q. "AUTOMATED SAMPLE COLLECTION FOR MICRO SAMPLE VOLUMES  
02:43PM 2 (BLOOD, URINE, TISSUE, ET CETERA) CUSTOMIZED FOR PEDIATRICS,  
02:44PM 3 PHLEBOTOMY, AND A FULL RANGE OF COLLECTION PROCEDURES."  
02:44PM 4 WHAT DID YOU UNDERSTAND THIS TO BE GETTING AT?  
02:44PM 5 A. THIS WAS THEIR OWN PROPRIETARY COLLECTION TECHNOLOGY,  
02:44PM 6 THE -- THEY CALLED IT -- SORRY.  
02:44PM 7 THEY REFERRED TO IT AS THE NANOTAINER, A VACUTAINER IS  
02:44PM 8 SORT OF THE, IT'S KIND OF LIKE A -- THERE'S A COMPANY THAT  
02:44PM 9 MARKETS THE VACUTAINER I THINK IS THEIR TRADE NAME, SO I THINK  
02:44PM 10 THEY WERE USING THAT AS A -- SO IT WAS A NAME THAT PHYSICIANS  
02:44PM 11 AND PHLEBOTOMISTS WERE FAMILIAR WITH.  
02:44PM 12 SO THEY HAD THEIR NANOTAINER, AND THEN THEY HAD THEIR OWN  
02:44PM 13 SMALL COLLECTION DEVICES FOR BLOOD DRAWS.  
02:44PM 14 Q. THEN IT SAYS, "ASSAYS.  
02:44PM 15 "CHEMISTRIES, 800 PLUS 10 MENU, AND TPS LIBRARY."  
02:44PM 16 WHAT DID YOU UNDERSTAND THAT TO MEAN?  
02:44PM 17 A. THAT THIS IS JUST THE TESTS THAT THEY'RE GOING TO BE  
02:45PM 18 OFFERING ON THEIR PROPRIETARY TECHNOLOGY.  
02:45PM 19 Q. AND WAS THE INFORMATION ON THIS SLIDE RELEVANT TO PFM'S  
02:45PM 20 INVESTMENT DECISION?  
02:45PM 21 A. IT WAS CONSISTENT WITH WHAT THEY TOLD US IN OUR MEETING,  
02:45PM 22 YES.  
02:45PM 23 Q. LET'S GO BACK TO PAGE 8 IF WE COULD, MS. WACHS.  
02:45PM 24 DO YOU SEE THE HEADING "PRESS," MR. GROSSMAN?  
02:45PM 25 A. YES.

02:45PM 1 Q. AND THERE'S AN IMAGE OF SOMETHING FROM "THE  
02:45PM 2 WALL STREET JOURNAL" THAT SAYS "ELIZABETH HOLMES: THE  
02:45PM 3 BREAKTHROUGH OF INSTANT DIAGNOSIS."  
02:45PM 4 DO YOU SEE THAT?  
02:45PM 5 A. YES.  
02:45PM 6 Q. AND IT APPEARS TO BE WRITTEN BY SOMEONE NAMED JOSEPH RAGO?  
02:45PM 7 A. YES.  
02:45PM 8 Q. IS THIS SOMETHING THAT YOU WOULD HAVE REVIEWED AND  
02:45PM 9 CONSIDERED AT THE TIME?  
02:45PM 10 A. YES.  
02:45PM 11 Q. AND THERE'S A LINE ON THIS SLIDE RIGHT ABOVE THE CARTOON  
02:45PM 12 IMAGE WHERE IT SAYS, "THE SECRET THAT HUNDREDS OF EMPLOYEES ARE  
02:45PM 13 NOW REFINING."  
02:45PM 14 MAYBE IF WE CAN ZOOM IN A LITTLE BIT MORE ON THAT,  
02:46PM 15 MS. WACHS.  
02:46PM 16 "THE SECRET THAT HUNDREDS OF EMPLOYEES ARE NOW REFINING  
02:46PM 17 INVOLVES DEVICES THAT AUTOMATE AND MINIATURIZE MORE THAN 1,000  
02:46PM 18 LABORATORY TESTS."  
02:46PM 19 DO YOU SEE THAT LANGUAGE?  
02:46PM 20 A. YES.  
02:46PM 21 Q. IS THAT CONSISTENT WITH STATEMENTS THAT MS. HOLMES AND  
02:46PM 22 MR. BALWANI MADE TO YOU?  
02:46PM 23 A. VERY.  
02:46PM 24 Q. OKAY. LET'S LOOK AT PAGE 9.  
02:46PM 25 DO YOU SEE THE HEADING "PRESS"?

02:46PM 1 A. YES.

02:46PM 2 Q. AND THERE APPEARS TO BE EXCERPTS OF A PRESS RELEASE TITLED

02:46PM 3 "THERANOS SELECTS WALGREENS AS A LONG-TERM PARTNER THROUGH

02:46PM 4 WHICH TO OFFER ITS NEW CLINICAL LABORATORY SERVICE."

02:46PM 5 DO YOU SEE THAT?

02:46PM 6 A. I DO.

02:46PM 7 Q. AND WAS THIS INFORMATION THAT YOU CONSIDERED AT THE TIME

02:46PM 8 OF YOUR INVESTMENT?

02:46PM 9 A. YES.

02:46PM 10 Q. AND WAS THIS RELEVANT TO YOU?

02:46PM 11 A. YES, IT WAS.

02:46PM 12 Q. AND THERE'S A LINE RIGHT BEFORE "PALO ALTO, CALIFORNIA AND

02:47PM 13 DEERFIELD, ILLINOIS."

02:47PM 14 "WITH FIRST LOCATION LAUNCHING THIS MONTH IN

02:47PM 15 SILICON VALLEY, CONSUMERS CAN NOW COMPLETE ANY

02:47PM 16 CLINICIAN-DIRECTED LAB TEST WITH AS LITTLE AS A FEW DROPS OF

02:47PM 17 BLOOD AND RESULTS AVAILABLE IN A MATTER OF HOURS."

02:47PM 18 DO YOU SEE THAT?

02:47PM 19 A. YES.

02:47PM 20 Q. AND IS THAT CONSISTENT WITH STATEMENTS MS. HOLMES AND

02:47PM 21 MR. BALWANI MADE TO YOU IN YOUR MEETINGS WITH THEM?

02:47PM 22 A. YES.

02:47PM 23 Q. LET'S GO TO PAGE 17, PLEASE.

02:47PM 24 DO YOU SEE THE HEADING, "SAME TESTS, A WHOLE NEW

02:47PM 25 APPROACH"?

02:47PM 1 A. YES.

02:47PM 2 Q. AND DO YOU SEE SOME IMAGES OF A FINGER AND A RED DOT AND

02:47PM 3 SOME TYPE OF TUBE?

02:47PM 4 A. I DO.

02:47PM 5 Q. AND WHAT DID YOU UNDERSTAND TO BE DISPLAYED HERE?

02:47PM 6 A. THIS IS THE ACTUAL PROCESS OF GETTING THE -- TAKING THE

02:48PM 7 SAMPLE FROM A FINGER, AND ON THE RIGHT YOU CAN SEE THE

02:48PM 8 NANOTAINER, WHICH IS THE DEVICE THAT THE BLOOD IS STORED IN AS

02:48PM 9 IT'S TRANSPORTED FROM THE COLLECTION SITE TO THE ANALYSIS SITE.

02:48PM 10 Q. AND THIS SAYS, "THERANOS RUNS ANY TEST AVAILABLE IN

02:48PM 11 CENTRAL LABORATORIES, AND PROCESSES ALL SAMPLE TYPES."

02:48PM 12 WAS THAT RELEVANT INFORMATION TO YOU?

02:48PM 13 A. YES.

02:48PM 14 Q. AND THEN AT THE BOTTOM IT SAYS, "THERANOS PROVIDES THE

02:48PM 15 HIGHEST LEVEL OF OVERSIGHT, AUTOMATION, AND STANDARDIZATION IN

02:48PM 16 OUR PRE- AND POST-ANALYTIC PROCESSES, ENSURING THE HIGHEST

02:48PM 17 LEVELS OF ACCURACY AND PRECISION."

02:48PM 18 WAS THAT RELEVANT TO YOU?

02:48PM 19 A. YES.

02:48PM 20 Q. LET'S LOOK AT THE NEXT PAGE, PAGE 18.

02:48PM 21 DO YOU SEE THE HEADING, "SPECIALIZED FOR EVERY SPECIALTY"?

02:49PM 22 A. YES.

02:49PM 23 Q. AND BENEATH THAT DO YOU SEE WHERE IT SAYS, "THERANOS IS A

02:49PM 24 NEW STANDARD IN LAB TESTING THAT CAN HELP EVERY PRACTICE. AND

02:49PM 25 WE OFFER EVEN MORE SPECIALIZED TOOLS FOR PATIENTS WITH SPECIFIC

02:49PM 1 NEEDS."

02:49PM 2 DO YOU SEE THAT?

02:49PM 3 A. I DO, YES.

02:49PM 4 Q. OKAY. I'D LIKE TO ZOOM IN, IF WE CAN, MS. WACHS, ON THE

02:49PM 5 TEXT UNDERNEATH PEDIATRICS AND GERIATRICS.

02:49PM 6 UNDER PEDIATRICS, MR. GROSSMAN, DO YOU SEE WHERE IT SAYS,

02:49PM 7 "BUT SINCE WE ONLY REQUIRE TINY DROPS, OUR TESTS ARE LESS

02:49PM 8 TRAUMATIC, GIVING YOU MORE SMILES AND FEWER TEARS."

02:49PM 9 IS THAT CONSISTENT WITH STATEMENTS THAT MR. BALWANI MADE

02:49PM 10 TO YOU?

02:49PM 11 A. YES.

02:49PM 12 Q. AND TO THE RIGHT UNDER GERIATRICS IT SAYS, "NO MORE

02:49PM 13 SEARCHING FOR VEINS. NO MORE PAINFUL DRAWS FROM THE KNUCKLE OR

02:49PM 14 BACK OF THE HAND."

02:49PM 15 DO YOU SEE THAT?

02:49PM 16 A. YES.

02:49PM 17 Q. IS THAT CONSISTENT WITH STATEMENTS THAT MR. BALWANI MADE

02:49PM 18 TO YOU PRIOR TO YOUR INVESTMENT?

02:49PM 19 A. YES.

02:49PM 20 Q. AND WAS THIS SIGNIFICANT TO YOU?

02:50PM 21 A. YES, IT WAS, BECAUSE THIS IS PART OF THE REASON WHY THE

02:50PM 22 MARKET FOR LAB SERVICES COULD EXPAND DRAMATICALLY WITH THE

02:50PM 23 TECHNOLOGY LIKE THIS, WHICH IS SOMETHING THAT THEY TALKED ABOUT

02:50PM 24 ACTUALLY IN THE SECOND MEETING. THE MARKET FOR DIAGNOSTIC

02:50PM 25 TESTING COULD EASILY DOUBLE WITH A PRODUCT, A TECHNOLOGY LIKE

02:50PM 1 THIS THAT WOULD BE ABLE TO -- YOU KNOW, WHERE A LOT OF TESTS  
02:50PM 2 JUST UNFORTUNATELY AREN'T DONE BECAUSE IT'S PAINFUL, BECAUSE  
02:50PM 3 IT'S SCARY.  
02:50PM 4 I MEAN, I HAD TO CHASE MY DAUGHTER AROUND THE BACKYARD TO  
02:50PM 5 GET A LAB AND TO GET HER TO TAKE BLOOD ONCE. I MEAN, IT'S A  
02:50PM 6 REAL ISSUE.  
02:50PM 7 SO, YES, THIS -- IT WAS VERY -- AND OBVIOUSLY IT'S -- YOU  
02:50PM 8 KNOW, ANY TIME YOU HAVE A PRODUCT THAT IS BETTER, FASTER,  
02:50PM 9 CHEAPER, MORE ACCURATE, YOU KNOW, THAT'S, THAT'S ALWAYS A -- AN  
02:50PM 10 ATTRACTIVE -- THOSE ARE VERY ATTRACTIVE CHARACTERISTICS FOR ANY  
02:50PM 11 NEW TYPE TECHNOLOGY RELATIVE TO WHAT THE EXISTING INCUMBENT  
02:51PM 12 PRODUCT'S TECHNOLOGIES ARE LIKE.  
02:51PM 13 Q. LET'S GO TO THE NEXT PAGE, PAGE 19.  
02:51PM 14 DO YOU SEE THE HEADING "FASTER RESULTS. FASTER ANSWERS"?  
02:51PM 15 A. YES.  
02:51PM 16 Q. AND IN THE MIDDLE IT SAYS, "4 HOURS OR LESS"?  
02:51PM 17 A. YES.  
02:51PM 18 Q. IS THAT SOMETHING THAT MR. BALWANI TOLD YOU?  
02:51PM 19 A. THIS ALSO CAME UP IN THAT SECOND MEETING, YES. THEY  
02:51PM 20 TALKED ABOUT THE 4 HOUR TURN-AROUND TIME.  
02:51PM 21 Q. OKAY. LET'S LOOK AT PAGE 21, PLEASE.  
02:51PM 22 DO YOU SEE THE HEADING "A NEW STANDARD IN QUALITY.  
02:51PM 23 "THE HIGHEST LEVELS IN ACCURACY"?  
02:51PM 24 A. YES.  
02:51PM 25 Q. AND THEN THERE'S A CIRCLE, "LESS THAN 10 PERCENT

02:51PM 1 COEFFICIENT OF VARIATION," AND THEN ABOVE THAT IT SAYS  
02:51PM 2 "VITAMIN D."  
02:51PM 3 WAS THIS RELEVANT TO YOU?  
02:51PM 4 A. YES, BECAUSE VITAMIN D IS A NOTORIOUSLY DIFFICULT TEST,  
02:52PM 5 AND THEY EXPLAINED THAT US TO US IN THE DUE DILIGENCE PROCESS,  
02:52PM 6 WHERE YOU SEE HUGE AMOUNTS OF VARIATION WITH CONVENTIONAL  
02:52PM 7 EQUIPMENT BY THIRD PARTY SUPPLIERS.  
02:52PM 8 SO, YOU KNOW, THAT'S -- THIS IS A PARTICULARLY HARD  
02:52PM 9 ANALYSIS TO DO, AND TO DO IT ACCURATELY AND CONSISTENTLY.  
02:52PM 10 Q. SO I'M GATHERING YOU WERE IMPRESSED THAT THERANOS DID  
02:52PM 11 THAT?  
02:52PM 12 A. YEAH. THERE'S ACTUALLY A COMPANY THAT JUST FOCUSED ON  
02:52PM 13 VITAMIN D, A PUBLIC COMPANY THAT THAT WAS THEIR WHOLE BUSINESS.  
02:52PM 14 THEY WERE ACTUALLY ACQUIRED, I DON'T REMEMBER IF IT WAS AFTER  
02:52PM 15 OR BEFORE.  
02:52PM 16 BUT THIS WAS AN AREA THAT WE, AS INVESTORS, WERE FAMILIAR  
02:52PM 17 WITH THE VITAMIN D SPACE.  
02:52PM 18 Q. AND THEN BENEATH THAT IT SAYS, "BY SYSTEMATICALLY  
02:52PM 19 CONTROLLING AND STANDARDIZING OUR PROCESSES, THERANOS OFFERS  
02:52PM 20 TESTS WITH THE HIGHEST LEVELS OF ACCURACY.  
02:52PM 21 "THERANOS AUTOMATES PRE- AND POST-ANALYTIC PROCESSES,  
02:52PM 22 DRASTICALLY MINIMIZING HUMAN PROCESSING -- THE CAUSE OF THE  
02:52PM 23 MAJORITY OF LAB TEST ERRORS."  
02:53PM 24 WAS THIS RELEVANT INFORMATION TO YOUR INVESTMENT?  
02:53PM 25 A. YES, IT WAS.

02:53PM 1 Q. LET'S LOOK AT PAGE 24, PLEASE.

02:53PM 2 DO YOU SEE THE HEADING "COST SAVINGS"?

02:53PM 3 A. YES.

02:53PM 4 Q. AND THEN IT SAYS, "THE FULL RANGE OF TESTS. A FRACTION OF

02:53PM 5 THE COSTS"?

02:53PM 6 A. YES.

02:53PM 7 Q. WE SAW IN YOUR DUE DILIGENCE QUESTIONS, YOU ASKED A NUMBER

02:53PM 8 OF QUESTIONS ABOUT THE COST OF THE ANALYZER AND THE ECONOMICS

02:53PM 9 AROUND THIS; IS THAT CORRECT?

02:53PM 10 A. YES.

02:53PM 11 Q. OKAY. AND DID YOU HAVE THE IMPRESSION THAT THERANOS COULD

02:53PM 12 PROVIDE ALL OF THESE TESTS WITH A MINI ANALYZER PROFITABLY?

02:53PM 13 A. YES.

02:53PM 14 Q. AND WAS THAT BASED ON STATEMENTS FROM MR. BALWANI?

02:53PM 15 A. IT WAS BASED ON A COUPLE OF THINGS. ONE WAS THE UNIT

02:53PM 16 ECONOMICS, OR THE COST OF MAKING THE ANALYZER. IT WAS ALREADY

02:53PM 17 40,000. THEY WERE GOING TO DRIVE THAT DOWN TO 10- OR 15,000.

02:54PM 18 THE DRAMATICALLY SMALLER SIZE THAT THEY WOULD NEED TO

02:54PM 19 PROVIDE LABORATORY SERVICES, SO LESS REAL ESTATE, LESS PEOPLE,

02:54PM 20 LESS LAB TECHS, LESS EQUIPMENT, LESS CHEMICALS THAN THOSE BIG

02:54PM 21 THIRD PARTY MACHINES NEEDED.

02:54PM 22 AND THEN THEY ACTUALLY GAVE US MARGINS. SO HE -- WHEN WE

02:54PM 23 WENT THROUGH THE FINANCIAL MODEL IN THE SECOND MEETING, THEY

02:54PM 24 HAD -- NOT ONLY DID THEY HAVE THEIR REVENUE PROJECTIONS BY

02:54PM 25 MONTH THROUGH 2014 AND 2015 WITH THE ROLLOUT AT WALGREENS.

02:54PM 1 AND THEN ALSO IN THAT MEETING WE ALSO LEARNED FOR THE  
02:54PM 2 FIRST TIME THAT SAFEWAY WAS ANOTHER ONE OF THEIR PARTNERS.  
02:54PM 3 SO THEY HAD ALL OF THAT BY MONTH.  
02:54PM 4 BUT THEY ALSO HAD THE MARGINS ASSOCIATED WITH THAT.  
02:54PM 5 AND, YES, THEY WERE PROFITABLE, SURPRISINGLY PROFITABLE.  
02:54PM 6 I MEAN, YOU WOULD NEVER BE ABLE TO DRIVE PROFITS AT THAT  
02:54PM 7 PRICE POINT TO THE MARKET USING EXPENSIVE THIRD PARTY  
02:54PM 8 EQUIPMENT.  
02:54PM 9 I MEAN, AND THE MODELS WOULD WORK.  
02:54PM 10 SO, YEAH, WE WENT THROUGH -- I CAN'T REMEMBER EXACTLY WHAT  
02:55PM 11 THE MARGINS WERE, BUT I HAVE THAT IN MY -- YOU KNOW, WE TOOK  
02:55PM 12 NOTES AND THEN WE HAVE THEIR MODEL.  
02:55PM 13 BUT, YEAH, IT WAS, IT WAS A PROFITABLE SERVICE AS IT  
02:55PM 14 RAMPED UP THROUGH 2014 INTO 2015.  
02:55PM 15 Q. LET'S GO FORWARD INTO PAGE 33.  
02:55PM 16 DO YOU SEE THE HEADING "KEY DEPLOYMENTS"?  
02:55PM 17 A. YES.  
02:55PM 18 Q. AND THERE'S A REFERENCE TO MEDICARE/MEDICAID;  
02:55PM 19 RETAIL;  
02:55PM 20 EMERGENCY ROOMS/HOSPITALS.  
02:55PM 21 THE REVENUE PROJECTION THAT YOU SAW, DID IT ALSO INCLUDE  
02:55PM 22 REVENUE FROM HOSPITAL SERVICES?  
02:55PM 23 A. YES.  
02:55PM 24 Q. AND THERE'S ALSO A REFERENCE TO DOD;  
02:55PM 25 PHARMA.

02:55PM 1 DO YOU SEE THAT?

02:55PM 2 A. I DO.

02:55PM 3 Q. AND DID YOU UNDERSTAND DOD TO BE DEPARTMENT OF DEFENSE?

02:55PM 4 A. YES, THAT'S EXACTLY WHAT IT MEANT, DEPARTMENT OF DEFENSE.

02:56PM 5 Q. AND PHARMA IS A REFERENCE TO PHARMACEUTICAL COMPANIES?

02:56PM 6 A. THE CLINICAL TRIAL ANALYSIS THAT THEY DID FOR

02:56PM 7 PHARMACEUTICAL COMPANIES WITH EXPERIMENTAL MEDICINES.

02:56PM 8 Q. LET ME DRAW YOUR ATTENTION TO PAGE 38.

02:56PM 9 DO YOU SEE AN IMAGE OF A BILLBOARD WITH THE WORDS "THE

02:56PM 10 BLOOD TEST, REINVENTED"?

02:56PM 11 A. YES.

02:56PM 12 Q. WHAT DID YOU UNDERSTAND THIS TO BE?

02:56PM 13 A. THIS WAS AN ADVERTISEMENT. I DON'T KNOW IF IT WAS AN

02:56PM 14 ACTUAL BILLBOARD OR A PROPOSED BILLBOARD, BUT THIS WAS JUST

02:56PM 15 SORT OF GOOD, YOU KNOW, REALLY ATTRACTIVE MARKETING, THE SIZE

02:56PM 16 OF THE NANOTAINER, THE AMOUNT OF BLOOD THAT THEY NEEDED TO RUN

02:56PM 17 STANDARD ANALYTIC EXPERIMENTS BEING DRAMATICALLY LESS THAN

02:56PM 18 ANYONE -- YOU KNOW, EVERYONE HAS GIVEN BLOOD AT SOME POINT.

02:56PM 19 SO, YEAH, I THINK IT'S JUST SORT OF A PUNCHY, SLICK

02:57PM 20 BILLBOARD THAT WOULD BE ON THE SIDE OF 101 OR SOMETHING LIKE

02:57PM 21 THAT.

02:57PM 22 Q. FURTHER ON, LET'S LOOK AT PAGE 43.

02:57PM 23 DO YOU SEE TO THE LEFT IT SAYS, "SHELF BLADE NUMBER 1"?

02:57PM 24 A. YES.

02:57PM 25 Q. AND THEN IF WE ZOOM IN ON THE TEXT, MAYBE WE CAN ZOOM IN A

02:57PM 1 LITTLE BIT MORE ON "GOODBYE BIG BAD NEEDLE," MS. WACHS.

02:57PM 2 GREAT.

02:57PM 3 DO YOU SEE WHERE IT SAYS, "ONLY A TINY SAMPLE FROM A

02:57PM 4 FINGERTIP AND NOTHING ELSE.

02:57PM 5 "ALL YOUR TESTS, EASY AND PAINLESSLY."

02:57PM 6 A. YES, I DO.

02:57PM 7 Q. AND ARE THOSE STATEMENTS THAT MR. BALWANI MADE TO YOU?

02:57PM 8 A. YES.

02:57PM 9 Q. LET'S GO TO PAGE 51, PLEASE.

02:58PM 10 DO YOU SEE THE HEADING "NEW POSSIBILITIES IN THE LAB"?

02:58PM 11 A. YES.

02:58PM 12 Q. AND TO THE LEFT THERE'S A COLUMN UNDER THE HEADING,

02:58PM 13 "ROUTINE, SPECIALTY AND ESOTERIC TESTING.

02:58PM 14 "ALL 1,000 PLUS CURRENTLY RUN TESTS/CPT CODES ARE

02:58PM 15 AVAILABLE THROUGH THERANOS."

02:58PM 16 IS THAT SOMETHING MR. BALWANI TOLD YOU?

02:58PM 17 A. YES.

02:58PM 18 Q. "THERANOS RUNS ANY TESTS AVAILABLE IN CENTRAL

02:58PM 19 LABORATORIES."

02:58PM 20 IS THAT SOMETHING THAT MR. BALWANI TOLD YOU?

02:58PM 21 A. YES.

02:58PM 22 Q. "THERANOS CAN PROCESS ANY SAMPLE TYPE."

02:58PM 23 IS THAT SOMETHING THAT MR. BALWANI TOLD YOU?

02:58PM 24 A. YES.

02:58PM 25 Q. AND THEN TO THE RIGHT, "THE UNPRECEDENTED LACK OF

02:58PM 1 VARIATION WITH THERANOS YIELDS:

02:58PM 2 "HIGHER INTEGRITY DATA AND LONGITUDINAL TRENDING."

02:58PM 3 IS THAT SOMETHING THAT MR. BALWANI TOLD YOU?

02:58PM 4 A. YES. THE LONGITUDINAL DATA IS WHAT -- IS REFERRING TO THE

02:59PM 5 IDEA THAT WITH THERANOS AND THE APP AND THEIR DATABASE, YOU

02:59PM 6 WOULD BE ABLE TO FOLLOW YOUR OWN DATA OVER MANY, MANY YEARS.

02:59PM 7 Q. AND WAS THIS INFORMATION RELEVANT TO YOUR INVESTMENT

02:59PM 8 DECISION?

02:59PM 9 A. YES.

02:59PM 10 Q. LET'S GO TO PAGE 62, PLEASE.

02:59PM 11 DO YOU SEE THE HEADING "THERANOS'S CLIA QUALITY

02:59PM 12 STANDARDS"?

02:59PM 13 A. YES.

02:59PM 14 Q. AND THERE'S A LINE TWO DOWN, "QUALITY CONTROL (QC) .

02:59PM 15 "MECHANISM TO ENSURE ALL TESTING PROCEDURES MEET HIGHEST

02:59PM 16 STANDARDS."

02:59PM 17 WAS THIS INFORMATION RELEVANT TO YOU?

02:59PM 18 A. YES.

02:59PM 19 Q. THERE'S ALSO A REFERENCE TO PROFICIENCY TESTING, AND IT

02:59PM 20 SAYS "TESTING FOR ACCURACY AND CONTROL COMPARISONS; BIENNIAL

02:59PM 21 AUDITS OF TESTING ACCURACY."

03:00PM 22 DO YOU SEE THAT?

03:00PM 23 A. YES.

03:00PM 24 Q. AND WHAT DID YOU UNDERSTAND THAT TO MEAN?

03:00PM 25 A. THE PROFICIENCY TESTING PROCESS IS I THINK MAYBE TWO OR

03:00PM 1 THREE TIMES A YEAR WHERE YOU'RE SENT REFERENCE SAMPLES AND YOU  
03:00PM 2 HAVE TO CORRECTLY MEASURE THOSE.  
03:00PM 3 AND THAT'S HOW YOU MAINTAIN YOUR CLIA ACCREDITATION.  
03:00PM 4 AND IF YOU PASS THAT TESTING, IF YOU CAN ACCURATELY READ  
03:00PM 5 THOSE SAMPLES, YOU -- YOU'RE CLIA CERTIFIED AND YOU'RE ALLOWED  
03:00PM 6 TO BILL MEDICARE AND MEDICAID FOR LAB SERVICES.  
03:00PM 7 AND THIS CAME UP EARLY IN THE SECOND MEETING WHEN WE ASKED  
03:00PM 8 ABOUT WHAT IS THE, IS THE FDA THE REGULATORY VALUE HERE, AND  
03:00PM 9 THEY KIND OF WALKED US THROUGH HOW THIS WORKS.  
03:00PM 10 AND THEN, YOU KNOW, THEY HAD SAID THEIR CLIA LAB, WITH  
03:00PM 11 THEIR MENU OF TESTS IN THE RETAIL SETTING, HAD REPEATEDLY  
03:00PM 12 MATCHED ALL OF THESE REFERENCE SAMPLES, AND THEY -- FOR  
03:01PM 13 EVERYTHING THAT THEY OFFERED.  
03:01PM 14 Q. LET'S LOOK AT THE NEXT PAGE, PAGE 63.  
03:01PM 15 AND BEFORE I ASK THAT, AT ANY POINT DID MR. BALWANI  
03:01PM 16 MENTION SOMETHING CALLED ALTERNATIVE ASSESSMENT OF PROFICIENCY?  
03:01PM 17 A. I DON'T RECALL THAT, NO.  
03:01PM 18 Q. THIS SAYS, "CLIA SURVEYS AND AUDITS."  
03:01PM 19 DOWN AT THE BOTTOM, "THERANOS MAINTAINS CLIA ACCREDITATION  
03:01PM 20 AS A HIGH COMPLEXITY LAB AND HAS PASSED ALL AUDITS WITHOUT A  
03:01PM 21 SINGLE DEFICIENCY TO MAINTAIN THIS STATUS."  
03:01PM 22 WAS THIS RELEVANT TO YOU?  
03:01PM 23 A. VERY RELEVANT. THIS -- AS THE COMPANY TOLD US, THIS  
03:01PM 24 STANDARD IS ACTUALLY A HIGHER STANDARD THAN THE FDA APPROVAL  
03:01PM 25 PROCESS FOR WHETHER IT'S A 510(K), WHICH IS A REGULATORY FILING

03:01PM 1 TYPE.

03:01PM 2 SO, A, THEY TOLD US THAT THIS WAS ACTUALLY A REALLY

03:01PM 3 IMPORTANT -- THIS WAS, I THINK MR. BALWANI USED THE TERM, "THE

03:02PM 4 TRUTH," BECAUSE YOU HAVE TO MEASURE SOMETHING AGAINST -- YOU

03:02PM 5 HAVE TO IDENTIFY THESE SAMPLES THAT YOU SENT.

03:02PM 6 AND, YOU KNOW, IT WAS -- DESPITE -- YOU KNOW, THERE'S NO

03:02PM 7 BETTER VALIDATION TO THE TECHNOLOGY. YOU CAN SAY WHATEVER --

03:02PM 8 ANYONE, ANYONE WHO IS THREATENED BY THIS TYPE OF OPEN ENDED

03:02PM 9 TECHNOLOGY, THEY CAN SAY WHATEVER THEY WANT TO THEIR

03:02PM 10 SHAREHOLDERS, OH, IT DOESN'T WORK, BLAH BLAH.

03:02PM 11 BUT WHEN YOU HAVE -- WHEN YOU PASS THE CLIA ACCREDITATION

03:02PM 12 STANDARD FOR EVERYTHING YOU OFFER, THE WHOLE MENU, THAT IN AND

03:02PM 13 OF ITSELF SPEAKS VOLUMES TO THE CAPABILITIES OF THE TECHNOLOGY.

03:02PM 14 SO, YES, THIS WAS A VERY KEY AND IMPORTANT DISCLOSURE.

03:02PM 15 Q. AND DID MR. BALWANI TELL YOU THAT THIS WAS SOMETHING THAT

03:02PM 16 THEY HAD ALREADY DONE AS OF JANUARY OF 2014?

03:02PM 17 A. HE SAID THAT THEY HAD REPEATEDLY AND ACCURATELY MET

03:02PM 18 THESE -- MEASURED THESE SAMPLES IN THEIR CLIA LAB.

03:02PM 19 Q. OKAY. LET'S LOOK AT PAGE 64.

03:03PM 20 DO YOU SEE WHERE IT SAYS "VALIDATION OF THERANOS"?

03:03PM 21 A. YES.

03:03PM 22 Q. "THERANOS HAS BEEN COMPREHENSIVELY VALIDATED OVER THE

03:03PM 23 COURSE OF THE LAST SEVEN YEARS BY TEN OF THE FIFTEEN LARGEST

03:03PM 24 PHARMACEUTICAL COMPANIES."

03:03PM 25 DO YOU SEE THAT LANGUAGE?

03:03PM 1 A. YES.

03:03PM 2 Q. AND WAS THIS RELEVANT TO YOU?

03:03PM 3 A. YES.

03:03PM 4 Q. OKAY. MS. WACHS, PLEASE GO TO PAGE 69.

03:03PM 5 DO YOU SEE THE HEADING, "EXCERPTS FROM THERANOS'S TEST

03:03PM 6 MENU"?

03:03PM 7 A. YES.

03:03PM 8 Q. AND THEN IT SAYS, "105 TESTS SHOWN, ANOTHER 20 PLUS PAGES

03:03PM 9 SHOW ALL AVAILABLE TESTS WITH THERANOS."

03:03PM 10 DO YOU SEE THAT?

03:03PM 11 A. YES.

03:03PM 12 Q. AND WHAT DID YOU UNDERSTAND THIS TO BE?

03:03PM 13 A. THIS WAS THE TEST -- THE RETAIL TEST MENU THAT THEY WERE

03:04PM 14 OFFERING.

03:04PM 15 Q. AND DID YOU UNDERSTAND THESE WERE THE TESTS THAT THERANOS

03:04PM 16 WAS PERFORMING ON ITS DEVICE?

03:04PM 17 A. THESE WERE THE TESTS THAT THEY WERE PERFORMING ON THEIR

03:04PM 18 PROPRIETARY TECHNOLOGY IN THEIR CLIA LAB, YES.

03:04PM 19 Q. OKAY. THANK YOU, MS. WACHS. WE CAN TAKE THIS DOWN.

03:04PM 20 LET ME PLEASE DRAW YOUR ATTENTION TO EXHIBIT 1443.

03:04PM 21 IS THIS ANOTHER EMAIL EXCHANGE BETWEEN YOU AND MR. BALWANI

03:04PM 22 IN THE JANUARY 2014 TIME PERIOD, MR. GROSSMAN?

03:04PM 23 A. I'M SORRY. YES.

03:05PM 24 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS

03:05PM 25 EXHIBIT 1443.

03:05PM 1 MS. WALSH: NO OBJECTION.

03:05PM 2 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

03:05PM 3 (GOVERNMENT'S EXHIBIT 1443 WAS RECEIVED IN EVIDENCE.)

03:05PM 4 MR. LEACH: IF WE CAN ZOOM IN, MS. WACHS, ON THE

03:05PM 5 BOTTOM PORTION OF PAGE 1.

03:05PM 6 Q. MR. GROSSMAN, YOU APPEAR TO WRITE ON JANUARY 20TH, 2014,

03:05PM 7 "HERE ARE A FEW OF THE TOPICS FOR TOMORROW."

03:05PM 8 DO YOU SEE THAT?

03:05PM 9 A. YES.

03:05PM 10 Q. AND DID YOU HAVE A FOLLOW-UP PHONE CALL WITH MR. BALWANI

03:05PM 11 SHORTLY AFTER THIS EMAIL?

03:05PM 12 A. YES, WE DID.

03:05PM 13 Q. OKAY. YOU WROTE, "COMPETITION. IS THERE ANYBODY OUT

03:05PM 14 THERE RIGHT NOW THEY ARE AWARE OF?"

03:05PM 15 AND THEN IN THE LAST TWO QUESTIONS YOU WROTE, "DO THEY SEE

03:05PM 16 ANOTHER LAB IN A BOX EMERGE? WHAT IS THEIR TIME TO MARKET

03:05PM 17 ADVANTAGE?"

03:05PM 18 DO YOU SEE THAT?

03:05PM 19 A. YES.

03:05PM 20 Q. AND WHAT DID YOU MEAN BY "LAB IN A BOX"?

03:05PM 21 A. WELL, THAT WAS THE WHOLE CONCEPT OF THE MINILAB WAS YOU'RE

03:06PM 22 SHRINKING THE ENTIRE REFERENCE LABORATORY DOWN INTO THIS PC

03:06PM 23 SIZED CONTAINER, BOX.

03:06PM 24 YOU KNOW, THIS IS THE MINILAB. THIS IS THE MINIATURIZING

03:06PM 25 THE LAB, NOT THE POINT OF CARE TEST.

03:06PM 1 AND SO WE WEREN'T AWARE OF ANY COMPANY THAT WAS PURSUING A  
03:06PM 2 STRATEGY LIKE THIS, BUT WE WANTED TO MAKE SURE THAT WE HADN'T  
03:06PM 3 MISSED ANY COMPETITORS THAT WE HAD TO FOCUS ON.  
03:06PM 4 PART OF THIS IS WE'RE TRYING TO REALLY UNDERSTAND, WHAT IS  
03:06PM 5 THE REAL COMPETITIVE MODE HERE? WHAT IS THE REAL -- WHAT ARE  
03:06PM 6 THE BARRIERS TO ENTRY? IS IT PATENTS? IS IT THE LEAD, THE  
03:06PM 7 FIRST MOVER ADVANTAGE THEY HAD? IS IT ALL THE MONEY?  
03:06PM 8 WE WERE REALLY TRYING TO UNDERSTAND HOW LONG WILL IT BE  
03:06PM 9 BEFORE -- A, WILL THERE BE COMPETITORS; AND, B, HOW LONG WILL  
03:07PM 10 IT TAKE BEFORE COMPETITORS SHOW UP THAT HAVE TECHNOLOGY THAT  
03:07PM 11 CAN POTENTIALLY RIVAL THERANOS'S DEVELOPMENT?  
03:07PM 12 Q. IN THE NEXT PARAGRAPH YOU WROTE, "WE WANT TO REVISIT THE  
03:07PM 13 FDA APPROVED PROCESS FOR ASSAYS AND ANALYZER. WILL THE  
03:07PM 14 ANALYZER BE AN FDA APPROVED DEVICE?"  
03:07PM 15 DO YOU SEE THAT TEXT?  
03:07PM 16 A. YES.  
03:07PM 17 Q. AND BY "ANALYZER," WERE YOU REFERRING TO THE MINILAB?  
03:07PM 18 A. YES.  
03:07PM 19 Q. FURTHER DOWN BELOW IN THE NEXT PARAGRAPH YOU WROTE IN  
03:07PM 20 LINE 2, "HOW WILL THIS WORK IN PHASE II OF THE ROLLOUT WHERE  
03:07PM 21 THEY ARE PUTTING ANALYZERS IN THE STORES? SAME FOR PHYSICIAN  
03:07PM 22 OFFICE. WILL EACH PHYSICIAN OFFICE BE REQUIRED TO BE CLIA  
03:07PM 23 CERTIFIED?"  
03:07PM 24 WHAT WERE YOU GETTING AT THERE?  
03:07PM 25 A. WE WERE TRYING TO UNDERSTAND HOW THE REGULATIONS OF THIS

03:07PM 1 TECHNOLOGY WILL IMPACT THE LONGER TERM BUSINESS MODEL THERE.

03:07PM 2 AND FOR US, THESE QUESTIONS ARE ALSO RELATED TO OUR

03:08PM 3 FINANCIAL MODEL THAT WE'RE TRYING TO BUILD, THE LONGER TERM

03:08PM 4 FINANCIAL MODEL.

03:08PM 5 THEY GAVE US A MODEL FOR 2014 AND '15 BY THE MONTH, AND SO

03:08PM 6 WE HAVE THAT TO SORT OF WORK WITH.

03:08PM 7 BUT THEN AS WE GOT BEYOND 2015, WE HAD TO SORT OF BUILD

03:08PM 8 OUR OWN, OUR OWN MODEL.

03:08PM 9 SO PART OF THESE QUESTIONS ARE JUST TRYING TO UNDERSTAND

03:08PM 10 HOW -- WHAT IS -- HOW DO WE THINK ABOUT HOW THIS IS GOING TO BE

03:08PM 11 USED IN THE REAL WORLD AND, YOU KNOW, IS IT GOING TO BE USED --

03:08PM 12 WHAT ARE THE POTENTIAL, WHAT ARE THE POTENTIAL HURDLES THEY

03:08PM 13 HAVE TO GET OVER IN THESE DIFFERENT MARKET SEGMENTS, THE

03:08PM 14 HOSPITAL MARKET, THE PHYSICIAN MARKET, THE RETAIL SETTING?

03:08PM 15 AND, YOU KNOW, HOW DO WE THINK ABOUT THE REGULATORY RISKS,

03:08PM 16 IF THERE ARE REGULATORY RISKS.

03:08PM 17 AND SO THAT'S WHERE THESE QUESTIONS ARE GOING.

03:08PM 18 SO, YOU KNOW, WE ACTUALLY ENDED UP -- THE WAY WE ENDED UP

03:08PM 19 MODELING THE COMPANY, WE TRIED TO TAKE THE REGULATORY ISSUES

03:08PM 20 OFF THE TABLE AND FOCUS ON HUB AND SPOKE, IN OTHER WORDS, BIG

03:09PM 21 METROPOLITAN AREAS WHERE YOU DIDN'T HAVE TO PUT THE SYSTEMS IN

03:09PM 22 WALGREENS STORES.

03:09PM 23 BUT THE PHYSICIAN OFFICE IS ACTUALLY A REGULATORY SAFE

03:09PM 24 HARBOR WHERE THE COMPANY EXPLAINED THAT YOU ACTUALLY CAN DO

03:09PM 25 TESTING WITHIN -- THESE DEVICES CAN BE USED THERE, YOU CAN DO

03:09PM 1 TESTING WITHIN PHYSICIAN OFFICES. THEY ARE A SAFE AREA FOR  
03:09PM 2 CLIA REGULATIONS.

03:09PM 3 BUT THEY WERE NOT FOCUSSSED ON PUTTING THESE DEVICES IN  
03:09PM 4 PHYSICIAN OFFICES. THEY WERE MORE FOCUSSSED ON NANOTAINERS AND  
03:09PM 5 COLLECTING SPECIMENS FROM PHYSICIAN OFFICES AND THEN TAKING  
03:09PM 6 THEM TO THEIR LOCAL LABORATORY AND THEN PROCESSING THOSE.

03:09PM 7 WE, WE -- AND THE, THE -- WE, WE -- THIS -- THE FIRST  
03:10PM 8 THING WE TALKED ABOUT IN THIS WAS REALLY AROUND, DO YOU WANT TO  
03:10PM 9 BE A MEDICAL DEVICE COMPANY OR DO YOU WANT TO BE AN INTEGRATED  
03:10PM 10 LAB SERVICE PROVIDER?

03:10PM 11 WE, AGAIN, KIND OF PUSHED HIM, MR. BALWANI, ON THAT POINT,  
03:10PM 12 AND HE WAS VERY CLEAR, WE DO NOT WANT TO BE A MEDICAL DEVICE  
03:10PM 13 COMPANY.

03:10PM 14 AND THAT CHANGES THE REGULATORY RISKS.

03:10PM 15 SO ONCE, ONCE THEY DECIDED NOT TO BE IN THE BUSINESS OF  
03:10PM 16 SELLING DEVICES TO THIRD PARTIES, THAT CHANGED A LOT OF FDA  
03:10PM 17 REGULATED RISKS, SO THAT WAS AN IMPORTANT PART OF THIS  
03:10PM 18 CONVERSATION.

03:10PM 19 Q. IN THAT SECOND TO LAST PARAGRAPH YOU WROTE, "WE WANT TO  
03:10PM 20 BETTER UNDERSTAND THE MANUFACTURING RAMP OF ANALYZERS. CAN  
03:10PM 21 THEY MAKE THEM AT HIGHER VOLUME WITHOUT SACRIFICING PRODUCT  
03:10PM 22 QUALITY? WHERE DO THEY MAKE THEM? WE'D LIKE TO SEE THAT PART  
03:10PM 23 OF THE OPERATION IF POSSIBLE. WHY DID THEY DECIDE TO MAKE THE  
03:10PM 24 ANALYZERS VERSUS OUTSOURCE THEM?"

03:10PM 25 DO YOU SEE THAT LANGUAGE?

03:10PM 1 A. YES.

03:10PM 2 Q. IS THIS ANOTHER EFFORT BY YOU TO UNDERSTAND THEIR VERTICAL

03:11PM 3 INTEGRATION?

03:11PM 4 A. YES. WE WANTED TO UNDERSTAND, ESPECIALLY NOW THAT WE HAVE

03:11PM 5 THE ROLLOUT, YOU KNOW, COULD THEY MAKE ENOUGH -- COULD THEY

03:11PM 6 ACTUALLY MAKE ENOUGH OF THEIR OWN PROPRIETARY ANALYZERS TO MEET

03:11PM 7 THE DEMAND FORECAST THAT THEY HAD FROM WALGREENS OVER THE

03:11PM 8 NEXT -- OVER 2014 AND '15, IN ADDITION TO THE DEMAND THAT THEY

03:11PM 9 EXPECTED TO GET FROM HOSPITAL LABORATORIES.

03:11PM 10 SO, YOU KNOW, IT'S ONE THING TO BE ABLE TO MAKE AN

03:11PM 11 ANALYZER.

03:11PM 12 IT'S A WHOLE OTHER THING TO BE ABLE TO MAKE HUNDREDS OF

03:11PM 13 THEM, AND THEN TO MAKE THEM SO THEY ACTUALLY PERFORM IN THE

03:11PM 14 REAL WORLD.

03:11PM 15 SO WE REALLY WANTED TO FOCUS ON, YOU KNOW, CAN YOU

03:11PM 16 ACTUALLY DELIVER HIGH QUALITY EQUIPMENT? CAN YOU ACTUALLY MAKE

03:11PM 17 YOUR OWN PROPRIETARY HIGH QUALITY EQUIPMENT AT SCALE? DO YOU

03:11PM 18 HAVE A FACILITY TO DO THAT? WE HADN'T SEEN A MANUFACTURING

03:11PM 19 FACILITY.

03:11PM 20 SO THAT'S REALLY -- AND MAKING SURE THAT TIES BACK TO OUR

03:11PM 21 FINANCIAL FORECAST, SO THEY HAVE ENOUGH CASH TO INVEST IN THIS

03:12PM 22 LAB INFRASTRUCTURE BUILD OUT.

03:12PM 23 Q. IN RESPONSE TO THESE QUESTIONS, DID MR. BALWANI SAY

03:12PM 24 ANYTHING ABOUT SIEMENS MACHINES?

03:12PM 25 A. NO, HE DID NOT.

03:12PM 1 Q. DID HE SAY ANYTHING ABOUT THIRD PARTY ANALYZERS?

03:12PM 2 A. NO, HE DID NOT.

03:12PM 3 Q. AT ANY POINT IN TIME DID MR. BALWANI TALK ABOUT THE

03:12PM 4 DURABILITY OF THE DEVICE OR ITS ABILITY TO WITHSTAND HARSH

03:12PM 5 CONDITIONS?

03:12PM 6 A. YES. AS PART OF THIS CONVERSATION, HE EXPLAINED HOW EACH

03:12PM 7 ONE OF THESE DEVICES ACTUALLY HAS, HE USED THE TERM, A

03:12PM 8 HEARTBEAT. IT'S CONNECTED TO THE NETWORK WIRELESSLY.

03:12PM 9 AND SO THEY CAN, THEY CAN TRACK HOW EACH ONE OF THEIR

03:12PM 10 PROPRIETARY SYSTEMS IS PERFORMING.

03:12PM 11 AND BECAUSE OF THE WORK THAT THEY DID WITH THE MILITARY,

03:12PM 12 THEY KNEW EXACTLY HOW TO CALIBRATE THESE THINGS. THEY KNEW

03:12PM 13 WHERE THEY TEND TO RUN INTO PROBLEMS.

03:12PM 14 AND SO THEY LEARNED OVER THE LAST TEN YEARS FROM THAT

03:12PM 15 EXPERIENCE, YOU KNOW, AND IT'S MADE THESE MACHINES MORE ROBUST.

03:13PM 16 HE EXPLAINED THAT -- I USE THE EXAMPLE THAT THEY KNOW THAT

03:13PM 17 ABOVE 120 DEGREES, FROM THE MILITARY EXPERIENCE, THE MACHINES

03:13PM 18 HAVE PROBLEMS.

03:13PM 19 BUT THAT WASN'T GOING TO BE AN ISSUE IN THE COMMERCIAL

03:13PM 20 RETAIL SETTING.

03:13PM 21 BUT THAT'S THE TYPE OF STUFF THAT THEY LEARNED SO THAT

03:13PM 22 THEY FELT REALLY CONFIDENT THAT THEY COULD MAKE NOT ONLY ENOUGH

03:13PM 23 OF THESE, BUT THEY COULD MAKE THEM WHERE THEY WILL PERFORM AS

03:13PM 24 EXPECTED IN A 24/7 TYPE PRODUCTION ENVIRONMENT.

03:13PM 25 WE, WE -- I THINK THE NUMBER, I THINK WE TALKED ABOUT THEY

03:13PM 1 COULD MAKE UP TO 200 A MONTH, AND BASED ON THE MODEL THAT THEY  
03:13PM 2 SENT US, MR. BALWANI WAS PRETTY CONFIDENT THAT THEY WOULDN'T  
03:13PM 3 NEED -- THESE THINGS ARE SO ROBUST, THEY WORK SO WELL IN THE  
03:13PM 4 REAL WORLD, WE WOULDN'T NEED MORE THAN 50 A MONTH TO -- THIS IS  
03:14PM 5 KIND OF FOR 2014 -- IN ORDER TO MORE THAN MEET THE DEMAND, THE  
03:14PM 6 DEMAND RAMP THAT THEY EXPECTED.

03:14PM 7 Q. DID MR. BALWANI SAY ANYTHING ABOUT THE DEVICE BEING IN  
03:14PM 8 AFGHANISTAN?

03:14PM 9 A. THAT'S WHERE THEY LEARNED THAT -- THAT'S THE -- HE WAS  
03:14PM 10 EXPLAINING THAT THE, THE USE OF THESE DEVICES WITH THE MILITARY  
03:14PM 11 AND THE INFORMATION THAT THEY RECEIVED FROM THESE DEVICES IN  
03:14PM 12 THAT SETTING HAS HELPED THEM ENGINEER THEM EVEN BETTER FOR THIS  
03:14PM 13 REAL WORLD RETAIL ROLLOUT.

03:14PM 14 AND ONE OF THE PRINCIPAL LEARNINGS WAS TEMPERATURE. THEY  
03:14PM 15 LEARNED THAT ABOVE 120 DEGREES FAHRENHEIT, OR MAYBE IT WAS  
03:14PM 16 100 -- SOMETHING LIKE THAT, 120, 125 -- THAT THE MACHINES DON'T  
03:14PM 17 WORK.

03:14PM 18 AND SO THAT'S AN EXAMPLE OF HOW THE FEEDBACK FROM THE  
03:14PM 19 BATTLEFIELD HELPED BUILD A MORE ROBUST PROPRIETARY SAMPLE  
03:14PM 20 PROCESSING UNIT.

03:14PM 21 Q. LET ME NEXT DRAW YOUR ATTENTION TO WHAT WE HAVE MARKED AS  
03:14PM 22 EXHIBIT 1454.

03:15PM 23 IS THIS ANOTHER EMAIL EXCHANGE BETWEEN YOU AND MR. BALWANI  
03:15PM 24 IN THE JANUARY 2014 TIME PERIOD LEADING UP TO PFM'S INVESTMENT?

03:15PM 25 A. YES.

03:15PM 1 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS

03:15PM 2 EXHIBIT 1454.

03:15PM 3 MS. WALSH: NO OBJECTION.

03:15PM 4 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

03:15PM 5 (GOVERNMENT'S EXHIBIT 1454 WAS RECEIVED IN EVIDENCE.)

03:15PM 6 BY MR. LEACH:

03:15PM 7 Q. MR. GROSSMAN, LET ME DRAW YOUR ATTENTION TO THE BOTTOM

03:15PM 8 PORTION OF THE PAGE.

03:15PM 9 DO YOU SEE WHERE YOU WROTE TO MR. BALWANI, "THANKS AGAIN

03:15PM 10 FOR THE TIME YESTERDAY."

03:15PM 11 IN THIS TIME PERIOD, WERE YOU HAVING PHONE CALLS WITH

03:15PM 12 MR. BALWANI?

03:15PM 13 A. YES.

03:15PM 14 Q. OKAY. AND THAT'S ALL IN AN EFFORT TO GET INFORMATION

03:15PM 15 ABOUT THERANOS TO MAKE AN INVESTMENT DECISION?

03:15PM 16 A. I BELIEVE WE, WE HAD A PHONE CONVERSATION RELATED TO THE

03:15PM 17 PREVIOUS EMAIL WE JUST WENT OVER.

03:15PM 18 Q. OKAY.

03:15PM 19 A. AND SO THIS, I THINK, EMAIL WAS AFTER THAT PHONE

03:16PM 20 CONVERSATION TOOK PLACE.

03:16PM 21 Q. YOU THEN WROTE, "I THINK WE'VE ANSWERED THE MAJORITY OF

03:16PM 22 OUR OPEN QUESTIONS AND HAVE JUST A FEW REMAINING ISSUES TO

03:16PM 23 ADDRESS. WE WOULD LIKE TO ADD A FEW CONSULTANTS TO THE NDA AS

03:16PM 24 WE DISCUSSED YESTERDAY. WE'D ALSO LIKE TO SPEAK WITH SOMEBODY,

03:16PM 25 IF THEY ARE OPEN TO IT, FROM UNITED HEALTH CARE."

03:16PM 1 DO YOU SEE THAT?

03:16PM 2 A. YES.

03:16PM 3 Q. AND YOU NEVER GOT ACCESS TO ANYBODY FROM UNITED HEALTH

03:16PM 4 CARE?

03:16PM 5 A. NO.

03:16PM 6 Q. AND WHAT WAS THE RESPONSE WHEN YOU WANTED TO BRING

03:16PM 7 CONSULTANTS IN?

03:16PM 8 A. WELL, IN THIS EMAIL, THIS EMAIL ABOVE THIS SECTION KIND OF

03:16PM 9 ANSWERS THAT QUESTION.

03:16PM 10 I MEAN, WE, WE -- THEY WERE RELUCTANT, BUT AS LONG AS WE

03:16PM 11 DIDN'T TALK ABOUT ANYTHING RELATED TO THE COMPANY, THEIR

03:16PM 12 REGULATORY STRATEGY, THEIR BUSINESS RELATIONSHIP WITH

03:16PM 13 WALGREENS, THEIR ROLLOUT ON THE RETAIL SETTING, THEIR

03:16PM 14 PARTNERSHIP WITH WALGREENS, I MEAN, SO THEY WERE RELUCTANT, BUT

03:17PM 15 THEY DID AGREE AS LONG AS WE DIDN'T TALK ABOUT ANY OF THE

03:17PM 16 RELEVANT BUSINESS ISSUES THAT WE NEEDED TO ENGAGE THE

03:17PM 17 CONSULTANT ON.

03:17PM 18 SO IT WAS KIND OF A DEAD END, BUT, YOU KNOW, WE, WE TRIED.

03:17PM 19 Q. OKAY. AND YOU THEN WROTE, "LASTLY, WE WOULD STILL LIKE TO

03:17PM 20 SEE THE LAB AND THE ANALYZER IN ACTION IF THAT'S POSSIBLE."

03:17PM 21 DO YOU SEE THAT LANGUAGE?

03:17PM 22 A. YES.

03:17PM 23 Q. OKAY. AND IF WE CAN GO TO MR. BALWANI'S RESPONSE,

03:17PM 24 MS. WACHS.

03:17PM 25 DO YOU SEE IN THE THIRD PARAGRAPH WHERE MR. BALWANI WROTE,

03:17PM 1 "SPEAKING WITH UHG WON'T BE POSSIBLE."

03:17PM 2 A. YEAH. UHG IS REFERRING TO UNITED HEALTH CARE GROUP.

03:17PM 3 THAT'S THE TERM THAT THERANOS USED FOR UNITED HEALTH CARE.

03:17PM 4 WE USED THE STOCK TICKER UNH, SO THAT'S THE SAME ENTITY.

03:17PM 5 Q. OKAY. YOU THEN WROTE, "IF WALKING THROUGH OUR LAB" --

03:17PM 6 EXCUSE ME.

03:17PM 7 MR. BALWANI WROTE, "IF WALKING THROUGH OUR LAB BECOMES THE

03:17PM 8 LAST REMAINING ITEM ON THE LIST, THEN WE CAN WALK 1 PERSON,

03:18PM 9 PERHAPS YOURSELF, THROUGH OUR BSL-2 LAB WHERE WE ARE RUNNING

03:18PM 10 BANKS OF OUR DEVICES."

03:18PM 11 DO YOU SEE THAT?

03:18PM 12 A. YES.

03:18PM 13 Q. AND AT SOME POINT DID YOU GET A TOUR OF THERANOS?

03:18PM 14 A. YES.

03:18PM 15 Q. AND WHAT DID YOU SEE?

03:18PM 16 A. WELL, WE DID A TOUR OF THE LAB, AND THIS WAS ALSO AT THEIR

03:18PM 17 PALO ALTO CORPORATE HEADQUARTERS, AND WE WENT INTO A LAB THAT

03:18PM 18 WAS SET UP WITH RACKS, METAL RACKS, WHERE THEY HAD A WHOLE

03:18PM 19 BUNCH OF MINILABS THAT WERE RUNNING SAMPLES.

03:18PM 20 Q. AND DURING THIS TOUR OF THE LAB, DID YOU SEE ANY SIEMENS

03:18PM 21 MACHINES?

03:18PM 22 A. NO.

03:18PM 23 Q. DID YOU SEE ANY DEVICES MANUFACTURED BY SOMEONE OTHER THAN

03:18PM 24 THERANOS?

03:18PM 25 A. NO.

03:18PM 1 Q. AND WERE YOU ALSO GIVEN A TOUR OF THE MANUFACTURING  
03:19PM 2 FACILITY?

03:19PM 3 A. YES, WE REQUESTED -- THAT'S ONE OF THE ITEMS THAT WE  
03:19PM 4 REQUESTED, TO SEE THE MANUFACTURING FACILITY.

03:19PM 5 Q. AND WHO ARRANGED THE TOUR OF THE MANUFACTURING FACILITY?

03:19PM 6 A. MR. BALWANI DID.

03:19PM 7 Q. AND WHAT DID YOU SEE DURING YOUR TOUR OF THE MANUFACTURING  
03:19PM 8 FACILITY?

03:19PM 9 A. WE WALKED THROUGH THE WHOLE FACILITY. IT WAS A BIG  
03:19PM 10 FACILITY. WE MET HIM OUT IN FRONT.

03:19PM 11 THEY ACTUALLY HAD A LAB THAT THEY WERE IN THE PROCESS OF  
03:19PM 12 BRINGING UP TO CLIA STANDARDS, SO WE SAW THE SPACE THAT THEY  
03:19PM 13 WERE GOING TO BE USING FOR THEIR, THEIR NEW CLIA LAB.

03:19PM 14 AND THEN WE WALKED THROUGH THE MANUFACTURING PLANT, THE  
03:19PM 15 WHOLE -- WE STARTED WHERE THEY WERE MACHINING BOTH PLASTIC AND  
03:19PM 16 METAL PARTS, AND THEY WALKED US THROUGH THE WHOLE -- ALL OF THE  
03:19PM 17 SPECIAL EQUIPMENT THAT THEY BOUGHT FROM I THINK SOME JAPANESE  
03:19PM 18 COMPANY.

03:19PM 19 AND THEN WE WENT TO THE ASSEMBLY SIDE OF THE PLANT, AND  
03:19PM 20 THEN WE FINISHED IN THE DISTRIBUTION WHERE THEY WERE KIND OF  
03:20PM 21 PACKAGING AND SHIPPING DEVICES.

03:20PM 22 Q. DURING THIS TOUR OF THE MANUFACTURING FACILITY, DID YOU  
03:20PM 23 SEE ANY SIEMENS DEVICES?

03:20PM 24 A. NO.

03:20PM 25 Q. DID MR. BALWANI DRAW YOUR ATTENTION TO ANY SIEMENS

03:20PM 1 DEVICES?

03:20PM 2 A. NO.

03:20PM 3 Q. LET ME DRAW YOUR ATTENTION TO WHAT HAS BEEN MARKED AS

03:20PM 4 EXHIBIT 1477.

03:20PM 5 IS THIS ANOTHER EMAIL BETWEEN YOU AND MR. BALWANI IN

03:20PM 6 JANUARY OF 2014 LEADING UP TO PFM'S INVESTMENT?

03:20PM 7 A. YES.

03:20PM 8 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS

03:20PM 9 EXHIBIT 1477.

03:20PM 10 MS. WALSH: NO OBJECTION.

03:20PM 11 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

03:20PM 12 (GOVERNMENT'S EXHIBIT 1477 WAS RECEIVED IN EVIDENCE.)

03:20PM 13 MR. LEACH: IF YOU COULD ZOOM IN ON THE TOP HALF,

03:20PM 14 MS. WACHS.

03:20PM 15 Q. MR. GROSSMAN, DO YOU SEE THE SUBJECT OF THIS EMAIL IS

03:20PM 16 QUESTIONS FOR CALL ON FINANCIAL MODEL?

03:20PM 17 A. YES.

03:20PM 18 Q. AND AT SOME POINT DID YOU HAVE ANOTHER CONVERSATION WITH

03:21PM 19 MR. BALWANI ABOUT THE FINANCIAL MODEL THAT HE HAD PROVIDED TO

03:21PM 20 PFM?

03:21PM 21 A. YES.

03:21PM 22 Q. OKAY. YOU WROTE, "SUNNY -- HERE ARE THE QUESTIONS."

03:21PM 23 AND THEN IN THE THIRD ROW, "CAN WAG WALK AWAY OR DIAL BACK

03:21PM 24 THE ROLLOUT IF THEY ARE NOT SATISFIED WITH THE UPTAKE?"

03:21PM 25 WHY WERE YOU ASKING THAT QUESTION?

03:21PM 1 A. WE JUST WANTED TO UNDERSTAND, YOU KNOW, HOW CONNECTED THE  
03:21PM 2 TWO ORGANIZATIONS WERE, AND THEY HAD A REALLY STRONG  
03:21PM 3 PARTNERSHIP, AND WE WERE -- I WANTED TO MAKE SURE IT WASN'T TOO  
03:21PM 4 GOOD IN THE SENSE THAT THERANOS -- THAT IT WASN'T A FAIR DEAL,  
03:21PM 5 IT WAS TOO GOOD FOR THERANOS RELATIVE TO WALGREENS, AND SO WE  
03:21PM 6 WANTED TO UNDERSTAND WHAT LEGALLY WALGREENS'S ABILITY TO  
03:21PM 7 DISENGAGE FROM THERANOS WAS.

03:21PM 8 Q. YOU THEN WROTE, "WHAT IS PHARMA SERVICE REVENUES? WHAT IS  
03:22PM 9 MARGIN ON THIS?"

03:22PM 10 DO YOU SEE THAT?

03:22PM 11 A. YES.

03:22PM 12 Q. AND DID YOU INCORPORATE REVENUES FROM PHARMACEUTICAL  
03:22PM 13 COMPANIES INTO THE MODEL THAT PFM PREPARED TO UNDERSTAND  
03:22PM 14 THERANOS'S BUSINESS?

03:22PM 15 A. YES. THIS WAS -- THEY TOLD US IN THE FIRST MEETING THAT  
03:22PM 16 THEY WERE SHIFTING THEIR EMPHASIS IN THE NEAR TERM TO THE  
03:22PM 17 RETAIL ROLLOUT, BUT THEY STILL HAD A VERY, A VERY -- A BIG  
03:22PM 18 FOCUS ON CONTINUING TO WORK WITH PHARMA. IT WAS IN THE  
03:22PM 19 FINANCIAL MODEL THAT THEY SHOWED US.

03:22PM 20 WE ACTUALLY, WE ACTUALLY INTRODUCED THEM TO COMPANIES  
03:22PM 21 TRYING TO HELP THEM GET BUSINESS. THAT WAS AFTER THE  
03:22PM 22 INVESTMENT WAS MADE, WHICH -- SO, YEAH, THIS WAS, THIS WAS  
03:22PM 23 ANOTHER REVENUE LINE IN THE FINANCIAL MODEL.

03:22PM 24 Q. BASED ON STATEMENTS FROM MR. BALWANI, DID YOU BELIEVE THAT  
03:22PM 25 THERANOS CURRENTLY HAD REVENUE FROM PHARMACEUTICAL COMPANIES?

03:22PM 1 A. YES.

03:22PM 2 Q. AND THEN IF WE CAN ZOOM OUT, MS. WACHS.

03:23PM 3 FURTHER DOWN BELOW YOU WROTE, "HOW DO THEY DEAL WITH THE

03:23PM 4 VENOUS DRAW ISSUE? I HAD TESTS DONE TODAY IN PA WALGREENS AND

03:23PM 5 HAD TO GET VENOUS DRAW."

03:23PM 6 DO YOU SEE THAT LANGUAGE?

03:23PM 7 A. YES.

03:23PM 8 Q. FIRST OF ALL, IS IT TRUE THAT YOU HAD A TEST DONE IN A

03:23PM 9 PALO ALTO WALGREENS AND HAD TO GET A VENOUS DRAW?

03:23PM 10 A. YES.

03:23PM 11 Q. TELL US ABOUT THAT.

03:23PM 12 A. I WENT IN -- EVERYONE ON OUR TEAM, I THINK EVERYONE, HAD

03:23PM 13 THEIR TESTS DONE AT SOME POINT.

03:23PM 14 SO WE WENT INTO THE PALO ALTO -- I WENT INTO THE PALO ALTO

03:23PM 15 WALGREENS UNANNOUNCED, AND I HAD A PHYSICIAN ORDER A BUNCH OF

03:23PM 16 TESTS, AND SO IT WAS JUST PART OF -- IT WAS PART OF OUR DUE

03:23PM 17 DILIGENCE PROCESS. WE WANTED TO MAKE SURE EVERYONE, MULTIPLE

03:23PM 18 PEOPLE WENT THROUGH THE PROCESS OF USING THE SERVICE IN

03:23PM 19 PALO ALTO.

03:24PM 20 Q. AND WHEN YOU GOT A VENOUS DRAW IN PALO ALTO, DID THAT

03:24PM 21 SURPRISE YOU?

03:24PM 22 A. A LITTLE BIT.

03:24PM 23 Q. OKAY. DID YOU HAVE CONVERSATIONS WITH MR. BALWANI ABOUT

03:24PM 24 THAT?

03:24PM 25 A. YES.

03:24PM 1 Q. WHAT DID HE TELL YOU?

03:24PM 2 A. HE SAID IT WAS UNUSUAL, VERY UNUSUAL.

03:24PM 3 HE SAID THAT MY PHYSICIAN ORDERED A VERY, VERY WEIRD TEST

03:24PM 4 THAT NO ONE ORDERS AND THAT, YOU KNOW, THERE WERE -- YOU KNOW,

03:24PM 5 AND THEY HAD TOLD US THAT THEY WERE -- THEY COULD DO AT THE

03:24PM 6 CURRENT POINT IN TIME 99 PERCENT OF THE TESTS, AND THERE WERE A

03:24PM 7 FEW THINGS THAT WOULD TAKE A FEW MONTHS, LIKE SIX MONTHS, LESS

03:24PM 8 THAN SIX MONTHS TO TRANSITION TO FINGERSTICK.

03:24PM 9 AND SO, YOU KNOW, IT KIND OF FELL WITHIN THAT CATEGORY IS

03:24PM 10 WHAT HE EXPLAINED TO ME.

03:24PM 11 Q. DID YOU BELIEVE THAT, EVEN IF YOUR BLOOD WAS BEING DRAWN

03:24PM 12 FROM A VEIN, THE BLOOD WAS BEING TESTED ON A THERANOS ANALYZER?

03:25PM 13 A. THAT WAS OUR UNDERSTANDING.

03:25PM 14 MS. WALSH: OBJECTION. LEADING.

03:25PM 15 THE COURT: LEADING? WAS IT LEADING? IS THAT WHAT

03:25PM 16 YOU --

03:25PM 17 MS. WALSH: YES.

03:25PM 18 THE COURT: WHY DON'T YOU RE-ASK THE QUESTION?

03:25PM 19 MR. LEACH: I CAN ASK A BETTER QUESTION, YOUR HONOR.

03:25PM 20 Q. YOU HAD YOUR BLOOD DRAWN FROM THE VEIN IN THE PALO ALTO

03:25PM 21 WALGREENS; IS THAT RIGHT, MR. GROSSMAN?

03:25PM 22 A. YES.

03:25PM 23 Q. IN YOUR OWN MIND, DID YOU HAVE AN UNDERSTANDING OF WHAT

03:25PM 24 TYPE OF DEVICE YOUR BLOOD WOULD BE TESTED ON?

03:25PM 25 A. YES.

03:25PM 1 Q. WHAT WAS THAT?

03:25PM 2 A. IT WOULD HAVE BEEN TESTED ON THERANOS'S PROPRIETARY

03:25PM 3 TECHNOLOGY.

03:25PM 4 Q. SO WAS THERE ANYTHING ABOUT THE FACT THAT YOUR BLOOD WAS

03:25PM 5 BEING DRAWN FROM A VEIN THAT GAVE YOU REASON TO THINK THAT

03:25PM 6 THERANOS WAS USING SOME OTHER TYPE OF EQUIPMENT?

03:25PM 7 A. NO.

03:25PM 8 Q. LET ME DRAW YOUR ATTENTION, PLEASE, TO WHAT WE HAVE MARKED

03:26PM 9 AS EXHIBIT 5441.

03:26PM 10 DO YOU RECOGNIZE THIS?

03:26PM 11 A. IT'S AN EMAIL, YES.

03:26PM 12 Q. IS THIS AN EMAIL FROM YOU TO SOMEONE NAMED ADAM CLAMMER?

03:26PM 13 A. YES.

03:26PM 14 Q. AND WHO IS ADAM CLAMMER?

03:26PM 15 A. HE WAS A CONSULTANT AND A FRIEND, A PERSONAL FRIEND, AND

03:26PM 16 CONSULTANT THAT WE, WE -- THAT THERANOS APPROVED, AND WE

03:26PM 17 ADDED -- HE WAS, HE WAS INCLUDED IN THE CONFIDENTIALITY

03:26PM 18 AGREEMENTS.

03:27PM 19 AND SO -- AND HE WAS AN INDIVIDUAL THAT HAD INVESTED IN

03:27PM 20 COMPANIES IN THE HEALTH CARE SPACE IN HIS CAREER.

03:27PM 21 HE WASN'T REALLY AN EXPERT IN ANY ONE AREA OF THE LAB

03:27PM 22 SPACE, BUT HE HAD INVESTED IN LABORATORY COMPANIES EARLIER IN

03:27PM 23 HIS CAREER.

03:27PM 24 SO HE'S SOMEONE THAT WE BROUGHT IN TO BE ANOTHER SET OF

03:27PM 25 EYES ON OUR DUE DILIGENCE PROCESS.

03:27PM 1 Q. AND THERE'S AN ATTACHMENT, THERANOS\_V12.XLSX.

03:27PM 2 DO YOU SEE THAT?

03:27PM 3 A. YES.

03:27PM 4 Q. AND WHAT IS THE ATTACHMENT?

03:27PM 5 A. THIS IS A FINANCIAL MODEL, OR A SIMPLE FINANCIAL MODEL --

03:27PM 6 OR A MODEL THAT WE HAD PUT TOGETHER, A FINANCIAL MODEL THAT WE

03:27PM 7 HAD BUILT WITH THREE DIFFERENT SCENARIOS THAT WE SENT IN.

03:27PM 8 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS

03:27PM 9 EXHIBIT 5441.

03:27PM 10 MS. WALSH: NO OBJECTION.

03:27PM 11 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

03:27PM 12 (GOVERNMENT'S EXHIBIT 5441 WAS RECEIVED IN EVIDENCE.)

03:28PM 13 MR. LEACH: IF YOU COULD ZOOM IN ON THE TOP,

03:28PM 14 MS. WACHS.

03:28PM 15 Q. DO YOU SEE WHERE YOU WROTE TO MR. CLAMMER ON JANUARY 29TH,

03:28PM 16 2014, "CELL D113 ON PFM REV MODEL IS SCENARIO. 1, 2, 3, FOR

03:28PM 17 THE BEAR, BASE, BULL."

03:28PM 18 DO YOU SEE THAT?

03:28PM 19 A. YES.

03:28PM 20 Q. AND WHAT DID YOU MEAN BY BEAR, BASE, AND BULL?

03:28PM 21 A. THIS IS KIND OF A REFERENCE TO BAD, MIDDLE OF THE ROAD,

03:28PM 22 AND THEN A POSITIVE SCENARIO FOR THE FINANCIAL MODEL, BEAR

03:28PM 23 BEING -- OR REFERENCE BEAR MARKET, BAD OUTCOME; BASE CASE IS

03:28PM 24 KIND OF THE, WHAT WE -- SORT OF OUR AVERAGE VIEW, OUR AVERAGE

03:28PM 25 FORECAST; AND THEN BULL IS KIND OF LIKE BULL MARKET, AND THAT'S

03:28PM 1 THE UPSIDE, THE UPSIDE SCENARIO.

03:29PM 2 Q. AND WHEN YOU CALCULATE A BEAR CASE SCENARIO, WHAT IS THE

03:29PM 3 PURPOSE OF DOING THAT?

03:29PM 4 A. WHAT WE'RE TRYING TO DO IS TAKE OUR RESEARCH, ALL OF THE

03:29PM 5 QUALITATIVE INFORMATION THAT WE ACCUMULATE IN THE DUE DILIGENCE

03:29PM 6 PROCESS, AND THEN TRANSLATE THAT INTO A SET OF NUMBERS.

03:29PM 7 AND SO, YOU KNOW, FOR THE BEAR CASE, WE WOULD WANT IT TO

03:29PM 8 REFLECT SOME OF THE, YOU KNOW, THE RISKS OR, YOU KNOW, THE --

03:29PM 9 ANYTHING THAT WE'D, IN THE DUE DILIGENCE PROCESS, IDENTIFIED

03:29PM 10 THAT COULD LEAD TO A LESS FAVORABLE FORECAST FOR THE BUSINESS.

03:29PM 11 WE TRY TO KIND OF INCORPORATE THAT INTO, INTO THAT

03:29PM 12 SCENARIO.

03:29PM 13 Q. LET ME DRAW YOUR ATTENTION, PLEASE, TO PAGE 44 OF THIS

03:29PM 14 DOCUMENT.

03:30PM 15 EXCUSE ME, MS. WACHS. 44. PERFECT.

03:30PM 16 AND IF WE CAN ZOOM IN ON THE TEXT.

03:30PM 17 DO YOU SEE THE THERANOS LOGO AT THE TOP OF THIS PAGE,

03:30PM 18 MR. GROSSMAN?

03:30PM 19 A. YES.

03:30PM 20 Q. AND YOU SAID THAT THE EXCEL FILE IS A MODEL THAT PFM PUT

03:30PM 21 TOGETHER.

03:30PM 22 DOES THE PFM MODEL ALSO INCLUDE THE PROJECTIONS THAT

03:30PM 23 THERANOS HAD PROVIDED TO YOU?

03:30PM 24 A. THAT'S CORRECT.

03:30PM 25 Q. AND IS THIS THE PORTION OF THE MODEL INCLUDING PROJECTIONS

03:30PM 1 THAT THERANOS HAD PROVIDED?

03:30PM 2 A. YES.

03:30PM 3 Q. AND ARE THESE NUMBERS THAT YOU HAD DISCUSSIONS WITH

03:30PM 4 MR. BALWANI ABOUT?

03:30PM 5 A. YES.

03:30PM 6 Q. OKAY. SO MUCH OF THIS DOCUMENT IS PREPARED BY PFM, BUT

03:30PM 7 THIS PORTION IS PREPARED BY THERANOS?

03:30PM 8 A. THAT IS CORRECT.

03:30PM 9 Q. OKAY. AND UP AT THE TOP THERE'S A ROW FOR 2014 DEVICE

03:30PM 10 COST PLUS INSTALLATION/CONFIG, AND THERE'S A NUMBER 70,000 TO

03:31PM 11 THE RIGHT.

03:31PM 12 DO YOU SEE THAT?

03:31PM 13 A. YES.

03:31PM 14 Q. AND WHAT DID YOU UNDERSTAND THAT TO MEAN?

03:31PM 15 A. THAT'S THE COST OF, THE FULL COST OF THE MINILAB,

03:31PM 16 INCLUDING THE INSTALLATION, THE CONFIGURATION, THE TRAINING.

03:31PM 17 THAT WAS OUR UNDERSTANDING OF WHAT THAT NUMBER REFERRED

03:31PM 18 TO.

03:31PM 19 Q. OKAY. AND SAME QUESTION FOR THE NEXT ROW, 2015 DEVICE

03:31PM 20 COST?

03:31PM 21 A. YES.

03:31PM 22 Q. THAT RELATES TO THE MINILAB?

03:31PM 23 A. ALSO THE MINILAB. AS THEY MOVED TO HIGHER PRODUCTION

03:31PM 24 VOLUME, THE COST COMES DOWN.

03:31PM 25 Q. OKAY. AT ANY POINT IN TIME DURING YOUR DISCUSSION ABOUT

03:31PM 1 DEVICE COST, DID MR. BALWANI PROVIDE DEVICE COSTS FOR A SIEMENS  
03:31PM 2 MACHINE?  
03:31PM 3 A. NO.  
03:31PM 4 Q. WOULD THAT HAVE BEEN RELEVANT TO YOUR INVESTMENT DECISION?  
03:31PM 5 A. YES, IT WOULD HAVE.  
03:31PM 6 Q. LET ME NEXT DRAW YOUR ATTENTION TO EXHIBIT 1482.  
03:32PM 7 IS THIS ANOTHER EMAIL EXCHANGE BETWEEN YOU AND MR. BALWANI  
03:32PM 8 IN THE JANUARY 2014 TIME PERIOD?  
03:32PM 9 A. YES.  
03:32PM 10 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS  
03:32PM 11 EXHIBIT 1482.  
03:32PM 12 MS. WALSH: NO OBJECTION.  
03:32PM 13 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.  
03:32PM 14 (GOVERNMENT'S EXHIBIT 1482 WAS RECEIVED IN EVIDENCE.)  
03:32PM 15 MR. LEACH: AND IF WE CAN PLEASE GO TO PAGE 2,  
03:32PM 16 MS. WACHS.  
03:32PM 17 Q. I DRAW YOUR ATTENTION, MR. GROSSMAN, TO THE BOTTOM PORTION  
03:32PM 18 WHERE YOU WROTE ON JANUARY 28TH, "SUNNY, JUST TO CONFIRM WE  
03:32PM 19 STILL WOULD LIKE TO SEE THE NEWARK AND THE THERANOS CLIA LAB."  
03:32PM 20 DO YOU SEE THAT LANGUAGE?  
03:32PM 21 A. YES.  
03:32PM 22 Q. AND IS THAT A REFERENCE TO WHAT WE TALKED ABOUT EARLIER,  
03:32PM 23 THE TOUR THAT YOU GOT OF THE MANUFACTURING FACILITY AND THE  
03:32PM 24 LAB?  
03:32PM 25 A. YEAH, THE MANUFACTURING FACILITY IS LOCATED IN NEWARK JUST

03:33PM 1 OVER THE SAN MATEO BRIDGE, YES.

03:33PM 2 Q. OKAY. AND IF WE CAN GO UP THE CHAIN TO MR. BALWANI'S

03:33PM 3 EMAIL AT THE TOP.

03:33PM 4 DO YOU SEE WHERE MR. BALWANI WROTE, "WE CAN WALK YOU

03:33PM 5 THROUGH PART OF THE LAB WHERE WE HAVE DOZENS OF DEVICES BEING

03:33PM 6 USED. HOWEVER, AS WE CHATTED BEFORE, IF YOU CAN LIMIT THIS TO

03:33PM 7 YOU AND VIKRAM, THAT WOULD BE APPRECIATED. THANKS."

03:33PM 8 DO YOU SEE THAT?

03:33PM 9 A. YES.

03:33PM 10 Q. VIKRAM, IS THAT SOMEONE ON YOUR TEAM?

03:33PM 11 A. HE'S REFERRING TO VIVEK. I GUESS HE DIDN'T REMEMBER HIS

03:33PM 12 NAME. BUT, YES --

03:33PM 13 Q. OKAY.

03:33PM 14 A. HE'S REFERRING TO VIVEK KHANNA, WHO HAS BEEN PART OF OUR

03:33PM 15 DUE DILIGENCE TEAM THE WHOLE TIME. BUT THAT'S, THAT'S WHO

03:33PM 16 VIKRAM IS SUPPOSED TO REFERENCE.

03:33PM 17 Q. OKAY. AND, AGAIN, WHEN YOU WERE IN THE LAB, DID

03:33PM 18 MR. BALWANI DRAW YOUR ATTENTION TO ANY SIEMENS DEVICES?

03:33PM 19 A. NO, HE DID NOT DRAW OUR ATTENTION TO ANY SIEMENS DEVICES.

03:34PM 20 Q. WOULD THAT HAVE BEEN A RED FLAG FOR YOU?

03:34PM 21 A. THAT WOULD HAVE BEEN A RED FLAG.

03:34PM 22 Q. DID PFM ULTIMATELY INVEST IN THERANOS?

03:34PM 23 A. YES, WE DID.

03:34PM 24 Q. OKAY. LET ME DRAW YOUR ATTENTION TO WHAT HAS BEEN MARKED

03:34PM 25 AS EXHIBIT 1505.

03:34PM 1 DO YOU HAVE THAT IN FRONT OF YOU, MR. GROSSMAN?

03:34PM 2 A. I DO, YES.

03:34PM 3 Q. IS THIS SOMETHING CALLED SERIES C2 PREFERRED STOCK

03:34PM 4 PURCHASE AGREEMENT?

03:34PM 5 A. YES.

03:34PM 6 Q. AND DOES THIS RELATE TO PFM'S INVESTMENT IN THERANOS?

03:34PM 7 A. YES.

03:34PM 8 MR. LEACH: THE GOVERNMENT OFFERS EXHIBIT 1505.

03:34PM 9 MS. WALSH: NO OBJECTION.

03:34PM 10 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

03:34PM 11 (GOVERNMENT'S EXHIBIT 1505 WAS RECEIVED IN EVIDENCE.)

03:34PM 12 MR. LEACH: LET'S START WITH PAGE 1, MS. WACHS.

03:34PM 13 Q. AND DO YOU SEE THAT THIS AGREEMENT STARTS WITH SECTION 1,

03:35PM 14 MR. GROSSMAN?

03:35PM 15 A. YES.

03:35PM 16 Q. I'D LIKE TO GO TO SECTION 4, WHICH BEGINS ON PAGE 6.

03:35PM 17 DO YOU SEE THAT THIS IS TITLED REPRESENTATIONS AND

03:35PM 18 WARRANTIES OF THE INVESTORS?

03:35PM 19 A. YES.

03:35PM 20 Q. AND IN THIS DOCUMENT, PFM AND ITS FUND IS THE INVESTOR?

03:35PM 21 A. I BELIEVE THAT'S RIGHT.

03:35PM 22 Q. OKAY. AND IF WE LOOK AT PAGE 7.

03:35PM 23 DO YOU SEE THAT THERE ARE A NUMBER OF REPRESENTATIONS FROM

03:35PM 24 4.2 TO 4.6 RELATING TO INVESTMENT INTENT, INVESTMENT

03:35PM 25 EXPERIENCE, SPECULATIVE NATURE OF INVESTMENTS, ACCESS TO DATA,

03:35PM 1 AND ACCREDITED INVESTOR?

03:35PM 2 DO YOU SEE THOSE?

03:35PM 3 A. YES.

03:35PM 4 Q. AND ALL -- WOULD THESE REPRESENTATIONS HAVE BEEN -- IF PFM

03:35PM 5 SIGNED THIS, WOULD THOSE REPRESENTATIONS HAVE BEEN TRUE AT THE

03:35PM 6 TIME?

03:35PM 7 A. YES.

03:35PM 8 Q. OKAY. LET'S LOOK AT EXHIBIT 1506.

03:36PM 9 IS THIS THE DOCUMENT WHEREBY PFM REPRESENTS ITS AGREEMENT

03:36PM 10 TO THE STOCK PURCHASE AGREEMENT?

03:36PM 11 A. I BELIEVE THAT IS THE CASE, YES.

03:36PM 12 Q. OKAY.

03:36PM 13 THE GOVERNMENT OFFERS EXHIBIT 1506.

03:36PM 14 MS. WALSH: NO OBJECTION.

03:36PM 15 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

03:36PM 16 (GOVERNMENT'S EXHIBIT 1506 WAS RECEIVED IN EVIDENCE.)

03:36PM 17 MR. LEACH: AND IF WE CAN ZOOM IN ON THE TOP HALF,

03:36PM 18 MS. WACHS, ALL OF THE WAY DOWN TO THE DATE, FEBRUARY 4TH, 2014.

03:36PM 19 Q. OKAY. THIS IS SIGNED BY SOMEBODY NAMED ERIC MOORE. WHO

03:36PM 20 WAS ERIC MOORE?

03:36PM 21 A. HE WAS THE CHIEF FINANCIAL OFFICER OF OUR FIRM AT THE

03:36PM 22 TIME, AND I THINK HE WAS A DESIGNATED SIGNATORY FOR OUR FIRM.

03:36PM 23 Q. OKAY. AND ABOVE THE SIGNATURE IT READS, "I ACKNOWLEDGE

03:37PM 24 AND AGREE THAT I AM INVESTING THE AGGREGATE DOLLAR VALUE OF

03:37PM 25 \$55,479,993."

03:37PM 1 DO YOU SEE THAT?

03:37PM 2 A. YES.

03:37PM 3 Q. AND THIS IS SIGNED ON BEHALF OF SOMETHING CALLED

03:37PM 4 PARTNERSHIP INVESTMENTS LP.

03:37PM 5 WHAT IS THAT?

03:37PM 6 A. PARTNER INVESTMENTS LP IS A FUND THAT WE USE TO COINVEST

03:37PM 7 ALONGSIDE OUR HEDGE FUND.

03:37PM 8 SO THIS IS FOR PEOPLE THAT -- TYPICALLY WHEN WE HAVE

03:37PM 9 EXCESS CAPACITY BEYOND WHAT OUR HEDGE FUND WOULD NEED, WE WILL

03:37PM 10 OFFER THAT CAPACITY TO BOTH EXISTING INVESTORS AND THOSE -- AND

03:37PM 11 PEOPLE WHO MAY NOT BE AN EXISTING INVESTOR.

03:37PM 12 WE AGGREGATE ALL OF THOSE INVESTMENT DOLLARS INTO THIS ONE

03:37PM 13 ENTITY SO THAT WE THEN WRITE ONE ADDITIONAL CHECK TO THE

03:37PM 14 COMPANY, AND IT MAKES IT EASIER FOR THE COMPANY TO -- AS

03:38PM 15 OPPOSED TO DEALING WITH ALL OF THE INDIVIDUALS.

03:38PM 16 Q. AND DOES THIS ACCURATELY CAPTURE THE DATE AND THE AMOUNT

03:38PM 17 OF THE INVESTMENT BY PARTNER INVESTMENTS LP?

03:38PM 18 A. YES.

03:38PM 19 Q. OKAY. LET'S GO DOWN FURTHER, MS. WACHS.

03:38PM 20 DO YOU SEE WHERE IT SAYS, "I ACKNOWLEDGE AND AGREE THAT I

03:38PM 21 AM INVESTING THE AGGREGATE DOLLAR VALUE OF \$38,336,632 TO

03:38PM 22 PURCHASE A TOTAL OF," AND THEN THERE'S A NUMBER OF "SHARES OF"

03:38PM 23 THE COMPANY'S SERIES C-2 PREFERRED STOCK."

03:38PM 24 DO YOU SEE THAT?

03:38PM 25 A. YES.

03:38PM 1 Q. AND THIS IS ON BEHALF OF SOMETHING CALLED PFM HEALTH CARE  
03:38PM 2 MASTER FUND LP.

03:38PM 3 WHAT IS THAT?

03:38PM 4 A. THAT'S THE ACTUAL HEDGE FUND, THE INSTITUTIONAL FUND THAT  
03:38PM 5 WE OPERATE. SO THIS WOULD BE THE FUND WHERE THE PENSION PLANS,  
03:38PM 6 THEY WOULD INVEST THROUGH THIS VEHICLE.

03:39PM 7 Q. AND DID YOU MAKE THE DECISION TO INVEST 38 MILLION IN  
03:39PM 8 THERANOS ON BEHALF OF PFM HEALTH CARE MASTER FUND?

03:39PM 9 A. YES.

03:39PM 10 Q. AND DOES THIS ACCURATELY REFLECT THE DATE OF THE  
03:39PM 11 INVESTMENT?

03:39PM 12 A. YES.

03:39PM 13 Q. AND FURTHER DOWN BELOW IT SAYS, "I ACKNOWLEDGE AND AGREE  
03:39PM 14 THAT I AM INVESTING THE AGGREGATE DOLLAR VALUE OF \$2,323,373."  
03:39PM 15 DO YOU SEE THAT?

03:39PM 16 A. YES.

03:39PM 17 Q. AND THIS IS ON BEHALF OF SOMETHING CALLED PFM HEALTH CARE  
03:39PM 18 PRINCIPALS FUND LP.

03:39PM 19 DO YOU SEE THAT?

03:39PM 20 A. YES.

03:39PM 21 Q. AND WHAT IS PFM HEALTH CARE PRINCIPALS FUND LP?

03:39PM 22 A. THIS IS WHAT WE CALLED OUR FRIENDS AND FAMILY FUND. THIS  
03:39PM 23 IS FOR EMPLOYEES THAT DON'T MEET THE STANDARDS THAT ARE  
03:39PM 24 REQUIRED, ASSET STANDARDS, THE INCOME STANDARDS THAT ARE  
03:39PM 25 REQUIRED FOR THE MASTER FUND, THE INSTITUTIONAL FUND.

03:39PM 1 SO IT INCLUDES FRIENDS, FAMILY -- FRIENDS AND FAMILY,

03:39PM 2 EMPLOYEES THAT INVEST IN THE PRINCIPAL'S FUND, AND WE RUN THIS

03:40PM 3 FUND EXACTLY LIKE -- BOTH FUNDS ARE RUN SO THEY'RE EXACTLY

03:40PM 4 PARALLEL TO EACH OTHER, BUT THEY'RE SEPARATE LEGAL ENTITIES.

03:40PM 5 Q. OKAY. SO THREE SEPARATE PFM ENTITIES INVESTED IN THERANOS

03:40PM 6 IN EARLY FEBRUARY OF 2014?

03:40PM 7 A. YES.

03:40PM 8 Q. THANK YOU.

03:40PM 9 LET ME NEXT DRAW YOUR ATTENTION, PLEASE, TO EXHIBIT 5858.

03:40PM 10 A. I DON'T HAVE THAT.

03:40PM 11 Q. YOU DON'T HAVE THAT?

03:40PM 12 DO YOU HAVE THAT, YOUR HONOR?

03:40PM 13 THE COURT: NO. I DON'T THINK IT'S IN HIS BINDER.

03:41PM 14 BY MR. LEACH:

03:41PM 15 Q. BEFORE I ASK ABOUT THE DOCUMENT, LET ME ASK A PRELIMINARY

03:41PM 16 QUESTION.

03:41PM 17 SO YOU INVEST IN FEBRUARY OF 2014?

03:41PM 18 A. YES.

03:41PM 19 Q. AND I'D LIKE TO MOVE FORWARD IN TIME TO OCTOBER OF 2015.

03:41PM 20 DO YOU HAVE THAT TIME PERIOD IN MIND?

03:41PM 21 A. YES.

03:41PM 22 Q. IN OR AROUND THAT TIME PERIOD, DID YOU BECOME AWARE OF A

03:41PM 23 "WALL STREET JOURNAL" ARTICLE THAT HAD NEGATIVE INFORMATION

03:41PM 24 ABOUT THERANOS?

03:41PM 25 A. I KNOW EXACTLY WHERE I WAS STANDING WHEN I READ THE --

03:41PM 1 MS. WALSH: OBJECTION.

03:41PM 2 THE COURT: MR. GROSSMAN, I'M SORRY.

03:41PM 3 MS. WALSH: OBJECTION. 401, 403.

03:41PM 4 THE COURT: IS THIS ARTICLE IN EVIDENCE?

03:41PM 5 MR. LEACH: THE ARTICLE IS NOT. THE FACT OF THE

03:41PM 6 ARTICLE IS, AND THIS IS PREFATORY TO --

03:41PM 7 THE COURT: SO I'LL OVERRULE THIS OBJECTION, AND YOU

03:41PM 8 CAN ASK YOUR QUESTION AGAIN.

03:41PM 9 MR. LEACH: OKAY.

03:41PM 10 Q. DID YOU BECOME AWARE OF A NEWS ARTICLE RELATING TO

03:41PM 11 THERANOS IN OR AROUND OCTOBER OF 2015?

03:42PM 12 A. YES, I DID. I REMEMBER EXACTLY WHERE I WAS STANDING WHEN

03:42PM 13 I READ THE EMAIL, OR THE ARTICLE. I REMEMBER EXACTLY WHERE I

03:42PM 14 WAS STANDING WHEN I SAW AND READ THE STORY.

03:42PM 15 Q. ALSO IN THAT MONTH, OCTOBER OF 2015, DID YOU OBSERVE

03:42PM 16 ELIZABETH HOLMES MAKE STATEMENTS TO AT A "WALL STREET JOURNAL"

03:42PM 17 CONFERENCE?

03:42PM 18 A. YES.

03:42PM 19 Q. AND DURING THAT CONFERENCE, DID YOU TAKE NOTES OF WHAT

03:42PM 20 MS. HOLMES WAS SAYING?

03:42PM 21 A. YES.

03:42PM 22 Q. OKAY. LET ME DRAW YOUR ATTENTION TO WHAT WE HAVE MARKED

03:42PM 23 AS EXHIBIT 2894.

03:42PM 24 DO YOU KNOW WHAT THIS DOCUMENT IS, MR. GROSSMAN?

03:42PM 25 A. YES, I DO.

03:43PM 1 Q. OKAY. ARE THESE NOTES THAT YOU PREPARED ON OR ABOUT  
03:43PM 2 OCTOBER 21ST, 2015?  
03:43PM 3 A. YES.  
03:43PM 4 Q. OKAY. ARE THEY YOUR NOTES OF WHAT YOU OBSERVED AND HEARD  
03:43PM 5 MS. HOLMES SAYING AT A CONFERENCE ON OR ABOUT OCTOBER 21ST,  
03:43PM 6 2015?  
03:43PM 7 A. YES.  
03:43PM 8 Q. DURING THAT CONFERENCE, DID MS. HOLMES MAKE STATEMENTS TO  
03:43PM 9 THE EFFECT THAT THERANOS HAD NEVER USED COMMERCIAL BASED LAB  
03:43PM 10 EQUIPMENT FOR FINGERSTICK SAMPLES?  
03:43PM 11 MS. WALSH: OBJECTION.  
03:43PM 12 THE COURT: OVERRULED.  
03:43PM 13 THE WITNESS: YES.  
03:43PM 14 BY MR. LEACH:  
03:43PM 15 Q. SHE DID MAKE STATEMENTS TO THAT EFFECT?  
03:43PM 16 A. YES.  
03:43PM 17 Q. OKAY. AND THIS WAS ON OCTOBER 21ST, 2015?  
03:43PM 18 A. YES.  
03:43PM 19 Q. OKAY. LET ME --  
03:43PM 20 WITH THE COURT'S PERMISSION, I WOULD LIKE TO DISPLAY WHAT  
03:43PM 21 IS IN EVIDENCE AS EXHIBIT 5387H.  
03:43PM 22 THE COURT: 5387H?  
03:44PM 23 MR. LEACH: YEAH, WHICH IS IN EVIDENCE.  
03:44PM 24 THE COURT: YES.  
03:44PM 25 MR. LEACH: AND IF WE CAN GO TO PAGE 122, MS. WACHS.

03:44PM 1 Q. MR. GROSSMAN, I'M DISPLAYING SOME TEXT MESSAGES BETWEEN  
03:44PM 2 MR. BALWANI AND MS. HOLMES.  
03:44PM 3 YOU HAVEN'T SEEN THESE BEFORE, HAVE YOU?  
03:44PM 4 A. NO.  
03:44PM 5 Q. YOU WEREN'T A PARTY TO THESE?  
03:44PM 6 A. NO.  
03:44PM 7 Q. OKAY. AND DO YOU SEE TO THE LEFT THERE'S A DATE  
03:44PM 8 OCTOBER 21ST, 2015?  
03:44PM 9 A. YES.  
03:44PM 10 Q. AND THAT'S THE DATE OF "THE WALL STREET JOURNAL"  
03:44PM 11 CONFERENCE WHERE MS. HOLMES WAS MAKING STATEMENTS?  
03:44PM 12 A. YES.  
03:44PM 13 Q. AND DO YOU SEE WHERE MR. BALWANI WROTE, "WORRIED ABOUT  
03:44PM 14 YOUR QUOTE ALL FINGERSTICKS ON OUR TECHNOLOGY UNQUOTE COMMENT."  
03:45PM 15 DO YOU SEE THAT LANGUAGE?  
03:45PM 16 A. YES.  
03:45PM 17 Q. OKAY.  
03:45PM 18 MAY I HAVE A MOMENT, YOUR HONOR?  
03:45PM 19 THE COURT: YES.  
03:45PM 20 (DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)  
03:45PM 21 MR. LEACH: THANK YOU, MS. WACHS. WE CAN TAKE THAT  
03:45PM 22 DOWN.  
03:45PM 23 YOUR HONOR, I'D LIKE TO DISPLAY TO MR. GROSSMAN ONLY AND  
03:45PM 24 TO THE COURT WHAT WE HAVE MARKED AS EXHIBIT 5858.  
03:45PM 25 THE COURT: ALL RIGHT.

03:45PM 1 BY MR. LEACH:

03:45PM 2 Q. ARE YOU ABLE TO SEE THAT ON THE SCREEN, MR. GROSSMAN?

03:45PM 3 A. NOT YET.

03:45PM 4 OH, OKAY.

03:45PM 5 Q. AND IF WE CAN GO TO PAGE 1.

03:46PM 6 AND I WOULD JUST LIKE YOU TO READ TO YOURSELF THE TITLE OF

03:46PM 7 THE DOCUMENTS IN BOLD ROUGHLY HALF OF THE WAY DOWN.

03:46PM 8 A. OKAY.

03:46PM 9 Q. DO YOU KNOW WHAT THIS DOCUMENT IS?

03:46PM 10 A. YES.

03:46PM 11 Q. OKAY. AND IF I COULD DRAW YOUR ATTENTION TO PAGE 40.

03:46PM 12 DO YOU SEE THAT THERE'S A LINE FOR AN INDIVIDUAL TO SIGN?

03:46PM 13 A. YES.

03:46PM 14 Q. OKAY. AND ARE YOU FAMILIAR WITH THE NAME THERE?

03:46PM 15 A. YES.

03:46PM 16 Q. OKAY. LET ME NEXT ASK YOU TO GO TO PAGE 7.

03:46PM 17 DO YOU SEE THAT THIS IS A -- HALFWAY THROUGH THE PAGE,

03:47PM 18 THERE'S A QUESTION, AND THEN BENEATH THAT THERE'S A BULLET

03:47PM 19 HEADING AND THEN ANSWER?

03:47PM 20 A. YES.

03:47PM 21 Q. AND DO YOU BELIEVE THIS TO BE A --

03:47PM 22 WELL, YOUR HONOR, THE GOVERNMENT OFFERS PAGE 7 OF THIS

03:47PM 23 DOCUMENT WITH JUST THE QUESTION NUMBER 7 AND THE ANSWER TO

03:47PM 24 QUESTION NUMBER 7.

03:47PM 25 (PAUSE IN PROCEEDINGS.)

03:47PM 1 MS. WALSH: YES, YOUR HONOR.

03:47PM 2 YOUR HONOR, IF WE CAN REDACT THE HEADINGS AND KEEP ONLY

03:47PM 3 THE PARAGRAPH STARTING WITH "DESCRIBE," AND THEN THE PARAGRAPH

03:47PM 4 STARTING WITH "MR.," BUT REDACTING "SUBJECT TO," I THINK THAT

03:47PM 5 WOULD CLEAR UP ISSUES THAT WE TALKED ABOUT EARLIER.

03:48PM 6 THE COURT: MR. LEACH.

03:48PM 7 MR. LEACH: I'M FINE WITH THOSE REDACTIONS,

03:48PM 8 YOUR HONOR.

03:48PM 9 THE COURT: I'M SORRY. DID YOU TIME STAMP THIS?

03:48PM 10 MR. LEACH: I DID NOT, YOUR HONOR, BUT I'M PLEASED

03:48PM 11 TO DO THAT.

03:48PM 12 THE COURT: OKAY. WITH THOSE AGREED-UPON

03:48PM 13 REDACTIONS, THIS WILL BE ADMITTED.

03:48PM 14 MR. LEACH: MAY I CONSULT WITH MS. WACHS FOR ONE

03:48PM 15 MOMENT --

03:48PM 16 THE COURT: YES.

03:48PM 17 MR. LEACH: -- BECAUSE I WANT TO MAKE SURE.

03:48PM 18 THE COURT: OF COURSE.

03:49PM 19 (DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

03:49PM 20 MR. LEACH: YOUR HONOR, I THINK WE MADE THE

03:49PM 21 APPROPRIATE REDACTIONS, AND IF I COULD --

03:49PM 22 THE COURT: LET ME ASK YOU, YOU'VE CONSULTED WITH

03:49PM 23 MS. WALSH ABOUT THE REDACTIONS, AND YOU'RE IN AGREEMENT?

03:49PM 24 MS. WALSH: YES, YOUR HONOR.

03:49PM 25 THE COURT: ALL RIGHT. THANK YOU.

03:49PM 1 THIS IS ADMITTED, AND IT MAY BE PUBLISHED.

03:49PM 2 (GOVERNMENT'S EXHIBIT 5858, REDACTED, WAS RECEIVED IN

03:49PM 3 EVIDENCE.)

03:49PM 4 THE COURT: IS THAT UP ON THE SCREEN? NOT YET.

03:49PM 5 IT'S NOT UP ON THE JURY'S SCREENS YET.

03:49PM 6 THE CLERK: NOW IT IS.

03:49PM 7 THE COURT: OKAY.

03:49PM 8 BY MR. LEACH:

03:49PM 9 Q. MR. GROSSMAN, DO YOU SEE UP AT THE TOP IT SAYS, "DESCRIBE

03:49PM 10 YOUR OWNERSHIP STAKE IN THERANOS, INCLUDING WITHOUT ANY

03:49PM 11 LIMITATION ANY STOCK OPTIONS."

03:50PM 12 DO YOU SEE THAT?

03:50PM 13 A. YES.

03:50PM 14 Q. AND DO YOU UNDERSTAND THE REMAINDER OF THE TEXT TO BE A

03:50PM 15 STATEMENT THAT MR. BALWANI MADE ABOUT HIS OWNERSHIP OF

03:50PM 16 THERANOS'S STOCK?

03:50PM 17 A. YES.

03:50PM 18 Q. AND IT READS, "MR. BALWANI RESPONDS AS FOLLOWS:

03:50PM 19 "MR. BALWANI CURRENTLY OWNS 28,716,815 SHARES OF CLASS A

03:50PM 20 COMMON STOCK," AND THEN IT CONTINUES.

03:50PM 21 DO YOU SEE THAT?

03:50PM 22 A. YES.

03:50PM 23 Q. AND DO YOU UNDERSTAND THIS TO BE A STATEMENT THAT

03:50PM 24 MR. BALWANI MADE?

03:50PM 25 A. YES.

03:50PM 1 Q. OKAY. AND THEN IF I COULD DRAW -- WITHOUT DISPLAYING IT  
03:50PM 2 ON THE SCREEN, I JUST -- WELL, DO YOU UNDERSTAND THIS TO BE  
03:50PM 3 MADE AT SOME POINT AFTER OCTOBER 15TH, 2015?  
03:50PM 4 A. YES.  
03:50PM 5 Q. THANK YOU, MR. GROSSMAN.  
03:50PM 6 THANK YOU, YOUR HONOR.  
03:50PM 7 I DON'T HAVE ANYTHING FURTHER.  
03:50PM 8 THE COURT: CROSS-EXAMINATION?  
03:50PM 9 MS. WALSH: YES, YOUR HONOR.  
03:51PM 10 MAY I REMOVE MY MASK, YOUR HONOR?  
03:51PM 11 THE COURT: YES. YES.  
03:51PM 12 **CROSS-EXAMINATION**  
03:51PM 13 BY MS. WALSH:  
03:51PM 14 Q. GOOD AFTERNOON, MR. GROSSMAN.  
03:51PM 15 A. GOOD AFTERNOON.  
03:51PM 16 Q. MY NAME IS AMY WALSH, AND I REPRESENT SUNNY BALWANI.  
03:51PM 17 SO WHAT I WANT TO ASK YOU ABOUT JUST FOR THE REMAINDER OF  
03:51PM 18 THE AFTERNOON -- I THINK WE'RE GOING TO HAVE TO CONTINUE THIS  
03:51PM 19 TOMORROW -- BUT WHAT I WANT TO START WITH IS YOUR BACKGROUND.  
03:51PM 20 I KNOW YOU TESTIFIED TO THAT ON DIRECT.  
03:52PM 21 BUT -- SO AFTER YOU GRADUATED FROM COLLEGE, YOU WORKED AT  
03:52PM 22 JP MORGAN; IS THAT RIGHT?  
03:52PM 23 A. YES.  
03:52PM 24 Q. AND YOU WORKED THERE AS A RESEARCH ANALYST; CORRECT?  
03:52PM 25 A. THE FIRST TWO YEARS I WAS A RESEARCH ASSISTANT, PORTFOLIO

03:52PM 1 ASSISTANT, AND THEN THE LAST THREE YEARS I WAS A RESEARCH  
03:52PM 2 ANALYST.

03:52PM 3 Q. OKAY. SO YOU WERE A RESEARCH ANALYST FOR THE LAST THREE  
03:52PM 4 YEARS; RIGHT?

03:52PM 5 A. YES.

03:52PM 6 Q. OKAY. AND WHEN YOU WERE A RESEARCH ANALYST, YOU COVERED  
03:52PM 7 THE HEALTH CARE SECTOR; IS THAT RIGHT?

03:52PM 8 A. YES.

03:52PM 9 Q. OKAY. AND THEN YOU WENT ON TO WORK FOR TWO DIFFERENT  
03:52PM 10 HEDGE FUNDS; IS THAT CORRECT?

03:52PM 11 A. IT WAS ACTUALLY THREE, BUT, YES.

03:52PM 12 Q. OKAY. THREE.  
03:52PM 13 AND IN -- FOR THOSE THREE HEDGE FUNDS, YOU WERE ALSO AN  
03:52PM 14 ANALYST; IS THAT RIGHT?

03:52PM 15 A. FOR THE FIRST, I WAS AN ANALYST FROM 2001 THROUGH 2007,  
03:53PM 16 2008; AND THEN AT THAT POINT I HANDED OFF MY ANALYST  
03:53PM 17 RESPONSIBILITIES TO ANOTHER INDIVIDUAL AND MY PRIMARY FOCUS AT  
03:53PM 18 THAT POINT WAS AS A PORTFOLIO MANAGER.

03:53PM 19 Q. OKAY.

03:53PM 20 A. FOR A FEW YEARS I DID BOTH.

03:53PM 21 Q. SO LET'S TAKE THEM ONE AT A TIME.

03:53PM 22 SO YOU WENT TO THE FIRST HEDGE FUND; CORRECT?

03:53PM 23 A. YES.

03:53PM 24 Q. AND YOU WERE AN ANALYST THERE; RIGHT?

03:53PM 25 A. YES.

03:53PM 1 Q. AND WHILE YOU WERE AN ANALYST, YOU COVERED THE HEALTH CARE  
03:53PM 2 SECTOR; IS THAT RIGHT?  
03:53PM 3 A. YES.  
03:53PM 4 Q. AND THEN YOU WENT ON TO THE SECOND HEDGE FUND; IS THAT  
03:53PM 5 RIGHT?  
03:53PM 6 A. YES.  
03:53PM 7 Q. AND YOU ALSO WORKED AS AN ANALYST THERE; CORRECT?  
03:53PM 8 A. YES.  
03:53PM 9 Q. AND AS AN ANALYST THERE, YOU ALSO COVERED THE HEALTH CARE  
03:53PM 10 SECTOR; IS THAT RIGHT?  
03:53PM 11 A. YES.  
03:53PM 12 Q. OKAY. AND THEN YOU WENT ON TO A THIRD HEDGE FUND; IS THAT  
03:53PM 13 RIGHT?  
03:53PM 14 A. YES.  
03:53PM 15 Q. AND YOU WERE AN ANALYST AT THAT HEDGE FUND, OR SOMETHING  
03:53PM 16 DIFFERENT?  
03:53PM 17 A. I WAS AN ANALYST AT THAT HEDGE FUND, AND THEN BECAME A  
03:53PM 18 PORTFOLIO MANAGER AT THAT HEDGE FUND.  
03:54PM 19 Q. OKAY. BUT ALSO COVERING THE HEALTH CARE SECTOR; IS THAT  
03:54PM 20 RIGHT?  
03:54PM 21 A. YES.  
03:54PM 22 Q. OKAY. AND THEN AT SOME POINT YOU AND YOUR COLLEAGUES  
03:54PM 23 STARTED PFM; CORRECT?  
03:54PM 24 A. YES.  
03:54PM 25 Q. OKAY. AND I THINK YOU SAID THIS ON DIRECT, BUT YOU'RE THE

03:54PM 1 MANAGING PARTNER OF PFM; RIGHT?

03:54PM 2 A. YES.

03:54PM 3 Q. AND YOU'RE THE CHIEF INVESTMENT OFFICER; RIGHT?

03:54PM 4 A. YES.

03:54PM 5 Q. AND PFM HEALTH SCIENCES IS AN S.E.C. REGISTERED INVESTMENT

03:54PM 6 ADVISOR; CORRECT?

03:54PM 7 A. YES.

03:54PM 8 Q. AND SO THAT'S A REGULATED ENTITY; CORRECT?

03:54PM 9 A. YES.

03:54PM 10 Q. AND AS THAT REGULATED ENTITY, YOU HAVE TO FILE CERTAIN

03:54PM 11 DISCLOSURES WITH THE S.E.C.; RIGHT?

03:54PM 12 A. YES.

03:54PM 13 Q. AND SO THROUGHOUT ALL OF THIS EXPERIENCE, YOU HAVE ABOUT

03:54PM 14 20 YEARS OF EXPERIENCE IN THE BIOTECH SPACE; IS THAT FAIR?

03:54PM 15 A. YEAH, THAT'S, THAT'S, THAT'S ACCURATE.

03:55PM 16 Q. OKAY. AND YOU ALSO HAVE ABOUT 20 YEARS EXPERIENCE

03:55PM 17 INVESTING IN HEALTH CARE COMPANIES; IS THAT RIGHT?

03:55PM 18 A. A LITTLE BIT LONGER THAN THAT, BUT, YES.

03:55PM 19 Q. OKAY. AND THOSE HEALTH CARE COMPANIES THAT YOU'VE

03:55PM 20 INVESTED IN HAVE BEEN VARIOUS DIFFERENT SIZES; IS THAT RIGHT?

03:55PM 21 A. YES.

03:55PM 22 Q. SOME HAVE BEEN PUBLIC COMPANIES; RIGHT?

03:55PM 23 A. YES.

03:55PM 24 Q. LARGE ONES LIKE PFIZER AND UNITED HEALTH; RIGHT?

03:55PM 25 A. YES.

03:55PM 1 Q. AND SMALL STARTUPS; IS THAT RIGHT?

03:55PM 2 A. YES.

03:55PM 3 Q. AND SIZES IN BETWEEN THOSE TWO ENDS OF THE SPECTRUM;

03:55PM 4 CORRECT?

03:55PM 5 A. YES.

03:55PM 6 Q. OKAY. AND WE JUST WENT THROUGH, OR MR. LEACH TOOK YOU

03:55PM 7 THROUGH THE THREE DIFFERENT ENTITIES THAT INVESTED IN THERANOS.

03:55PM 8 DO YOU REMEMBER THAT?

03:55PM 9 A. YES.

03:55PM 10 Q. AND I JUST WANT TO RUN THROUGH THOSE TO MAKE SURE I'M

03:55PM 11 CLEAR ON IT.

03:55PM 12 ONE WAS PARTNER INVESTMENTS LP; CORRECT?

03:56PM 13 A. YES.

03:56PM 14 Q. AND THEN THERE WAS HEALTH CARE MASTER FUND; RIGHT?

03:56PM 15 A. YES.

03:56PM 16 Q. AND THEN THE PFM HEALTH CARE PRINCIPALS FUND LP; RIGHT?

03:56PM 17 A. YES.

03:56PM 18 Q. OKAY. AND THE HEALTH CARE MASTER FUND WAS THE LARGEST OF

03:56PM 19 THE THREE; IS THAT RIGHT?

03:56PM 20 A. IT'S, IT'S QUITE -- I WANT TO ANSWER THE QUESTION. THE

03:56PM 21 PARTNER INVESTMENTS ISN'T A FUND IN THE SENSE -- IT'S A

03:56PM 22 DIFFERENT ENTITY. THERE'S NO -- WE -- SO HERE'S HOW I WOULD

03:56PM 23 ANSWER THE QUESTION. SORRY. BUT --

03:56PM 24 Q. I DON'T MEAN TO INTERRUPT YOU.

03:56PM 25 MY QUESTION WAS ABOUT HEALTH CARE MASTER FUND.

03:56PM 1 A. YEAH, MASTER FUND IS THE LARGEST -- LARGER THAN  
03:56PM 2 PRINCIPALS.

03:56PM 3 PARTNER INVESTMENT HAS NO CAPITAL. IT'S JUST A FUND THAT  
03:56PM 4 HAS INDIVIDUAL DEALS THAT WE DO -- HAVE DONE OVER TIME.

03:57PM 5 SO IF YOU ADD UP THE DEALS THAT WERE IN PARTNER INVESTMENT  
03:57PM 6 AT THAT TIME, IT WAS A MUCH SMALLER FUND THAN THE HEALTH CARE  
03:57PM 7 MASTER FUND.

03:57PM 8 Q. OKAY. SO I JUST WANT TO FOCUS ON HEALTH CARE MASTER FUND  
03:57PM 9 FOR THE TIME BEING. OKAY?

03:57PM 10 A. OKAY.

03:57PM 11 Q. AND THAT'S THE LARGEST ONE; RIGHT?

03:57PM 12 A. YES.

03:57PM 13 Q. AND THE INVESTORS IN THAT FUND INCLUDED FAMILY OFFICES;  
03:57PM 14 RIGHT?

03:57PM 15 A. YES.

03:57PM 16 Q. INSTITUTIONAL INVESTORS; CORRECT?

03:57PM 17 A. YES.

03:57PM 18 Q. AND HIGH NET WORTH INDIVIDUALS; IS THAT RIGHT?

03:57PM 19 A. YES.

03:57PM 20 Q. AND YOU WERE THE PORTFOLIO MANAGER OF THAT FUND; IS THAT  
03:57PM 21 CORRECT?

03:57PM 22 A. YES.

03:57PM 23 Q. AND SO YOU, AS PORTFOLIO MANAGER, HAD THE ULTIMATE  
03:57PM 24 AUTHORITY TO MAKE DECISIONS ABOUT INVESTMENTS; IS THAT TRUE?

03:57PM 25 A. YES.

03:57PM 1 Q. OKAY. AND WHEN THE INVESTORS IN THAT FUND GIVE YOU THEIR  
03:57PM 2 MONEY, THEY, THEY NO LONGER HAVE CONTROL OF THEIR MONEY; IS  
03:57PM 3 THAT CORRECT?  
03:57PM 4 A. YES.  
03:57PM 5 Q. AND WHAT THE FUND INVESTS IN IS YOUR DECISION; IS THAT  
03:58PM 6 RIGHT?  
03:58PM 7 A. WELL, WE HAVE FUND GUIDELINES THAT WE HAVE TO OPERATE  
03:58PM 8 WITHIN.  
03:58PM 9 SO WE HAVE LIMITS TO WHAT WE CAN INVEST IN, WHERE WE CAN  
03:58PM 10 INVEST, JUST LIKE ANY FUND WOULD HAVE.  
03:58PM 11 Q. OKAY. BUT WITHIN THOSE GUIDELINES, YOU ARE THE ULTIMATE  
03:58PM 12 DECISION-MAKER; IS THAT RIGHT?  
03:58PM 13 A. YES.  
03:58PM 14 Q. OKAY. SO NOW I WANT TO TURN TO THE DUE DILIGENCE PROCESS  
03:58PM 15 THAT YOU ENGAGED IN REGARDING THERANOS?  
03:58PM 16 A. OKAY.  
03:58PM 17 Q. YOU HAD A TEAM OF PEOPLE WORKING WITH YOU; CORRECT?  
03:58PM 18 A. YES.  
03:58PM 19 Q. AND I WANT TO JUST RUN THROUGH SOME OF THOSE TEAM MEMBERS  
03:58PM 20 AND THEIR BACKGROUND TO THE EXTENT THAT YOU KNOW.  
03:58PM 21 CHRIS JAMES WAS -- CHRIS JAMES WAS YOUR PARTNER AT PFM; IS  
03:58PM 22 THAT RIGHT?  
03:58PM 23 A. YES.  
03:58PM 24 Q. AND HE WAS ANOTHER PORTFOLIO MANAGER AT PFM; IS THAT  
03:58PM 25 RIGHT?

03:58PM 1 A. YES.

03:59PM 2 Q. IS HE STILL THERE?

03:59PM 3 A. NO.

03:59PM 4 Q. AND AT THE TIME, HE DEFERRED TO YOU ON INVESTMENTS IN

03:59PM 5 HEALTH CARE COMPANIES; CORRECT?

03:59PM 6 A. YES.

03:59PM 7 Q. AND THAT WAS BECAUSE OF YOUR BACKGROUND IN THE HEALTH CARE

03:59PM 8 SECTOR; RIGHT?

03:59PM 9 A. YES.

03:59PM 10 Q. OKAY. THEN THERE WAS ANOTHER GENTLEMAN NAMED

03:59PM 11 VIVEK KHANNA; RIGHT?

03:59PM 12 A. YES.

03:59PM 13 Q. AND HE WAS A SENIOR ANALYST AT PFM; CORRECT?

03:59PM 14 A. YES.

03:59PM 15 Q. AND HE ALSO HAD SIGNIFICANT EXPERIENCE IN THE HEALTH CARE

03:59PM 16 FIELD; RIGHT?

03:59PM 17 A. YES.

03:59PM 18 Q. HE HAD -- HIS EXPERIENCE SPANS 20 OR MORE YEARS WITH

03:59PM 19 HEALTH CARE COMPANIES; IS THAT RIGHT?

03:59PM 20 A. I BELIEVE THAT'S RIGHT, YES.

03:59PM 21 Q. OKAY. AND HE FOCUSED -- HIS CAREER FOCUSED ON HEALTH

03:59PM 22 CARE COMPANIES, BUT ALSO ONCE HE GOT TO PFM, THAT'S WHAT HE

03:59PM 23 FOCUSED ON; RIGHT?

03:59PM 24 A. YES.

03:59PM 25 Q. OKAY. AND THEN THERE WAS ANOTHER GENTLEMAN NAMED

03:59PM 1 ALEX RABODZEY; IS THAT CORRECT?

04:00PM 2 A. YES.

04:00PM 3 Q. AND HE WAS ANOTHER SENIOR ANALYST AT PFM; RIGHT?

04:00PM 4 A. YES.

04:00PM 5 Q. NOW, HE HAD -- I BELIEVE IT'S DR. RABODZEY; RIGHT?

04:00PM 6 A. I BELIEVE THAT'S RIGHT.

04:00PM 7 Q. AND HE HAD MORE OF A SCIENCE BACKGROUND; IS THAT CORRECT?

04:00PM 8 A. YES.

04:00PM 9 Q. AND, IN FACT, HE HAD A BACHELOR'S DEGREE FROM THE MOSCOW

04:00PM 10 INSTITUTE OF PHYSICS AND TECHNOLOGY; IS THAT RIGHT?

04:00PM 11 A. I BELIEVE THAT'S RIGHT.

04:00PM 12 Q. OKAY. AND THEN HE ALSO HAD A PH.D. IN BIOLOGICAL

04:00PM 13 ENGINEERING FROM M.I.T.; IS THAT RIGHT?

04:00PM 14 A. YES.

04:00PM 15 Q. AND WHILE AT M.I.T., HIS FOCUS WAS ON MICROFLUIDICS;

04:00PM 16 CORRECT?

04:00PM 17 A. I DON'T RECALL WHAT HIS FOCUS, HIS PH.D. FOCUS WAS.

04:00PM 18 Q. OKAY. YEP.

04:00PM 19 AND DR. RABODZEY HAD DONE DUE DILIGENCE WORK IN THE PAST

04:00PM 20 IN CONNECTION WITH BIO AND LIFE SCIENCE COMPANIES; IS THAT

04:00PM 21 RIGHT?

04:00PM 22 A. YES.

04:00PM 23 Q. AND WHILE AT PFM, HE FOCUSED ON BIOTECH COMPANIES;

04:00PM 24 CORRECT?

04:00PM 25 A. YES.

04:00PM 1 Q. AND SO ON THE THERANOS DEAL, HE KIND OF SERVED AS THE  
04:01PM 2 SCIENCE EXPERT ON THE TEAM FOR DUE DILIGENCE; IS THAT FAIR?  
04:01PM 3 A. HE WAS -- WE BROKE UP THE RESPONSIBILITIES, SO HE WAS MORE  
04:01PM 4 ON THE DATA SIDE, AND SOME OF THE REGULATORY ISSUES.  
04:01PM 5 Q. OKAY. AND THE DATA RELATED TO THE SCIENCE; CORRECT?  
04:01PM 6 A. THE TESTING DATA THAT THEY HAD.  
04:01PM 7 Q. RIGHT. THE DATA RELATED TO THE FUNCTIONING OF THE  
04:01PM 8 THERANOS DEVICE; CORRECT?  
04:01PM 9 A. YES.  
04:01PM 10 Q. OKAY. AND THEN THERE WAS ANOTHER GENTLEMAN NAMED  
04:01PM 11 SRI BALASURYAN; IS THAT RIGHT?  
04:01PM 12 A. YES.  
04:01PM 13 Q. AND HE WAS A SENIOR ANALYST; CORRECT?  
04:01PM 14 A. YES.  
04:01PM 15 Q. AND HE WAS RESPONSIBLE FOR THE FINANCIAL MODELING THAT YOU  
04:01PM 16 DID DURING YOUR DUE DILIGENCE; IS THAT RIGHT?  
04:01PM 17 A. YES.  
04:01PM 18 Q. OKAY. AND HE HELPED CREATE THE MODEL WE JUST SAW THAT  
04:01PM 19 CAME INTO EVIDENCE; RIGHT?  
04:02PM 20 A. YES.  
04:02PM 21 Q. AND HE ALSO HELPED CREATE SOME SLIDES FOR YOUR FINAL  
04:02PM 22 PRESENTATION TO THE INVESTORS; IS THAT CORRECT?  
04:02PM 23 A. I'M NOT SURE WHO CREATED THE SLIDES.  
04:02PM 24 Q. OKAY. MR. BALASURYAN, YOU DON'T KNOW WHETHER HE  
04:02PM 25 PARTICIPATED IN CREATING THE SLIDES?

04:02PM 1 A. IT CERTAINLY WAS A COLLABORATIVE EFFORTS. I DON'T KNOW  
04:02PM 2 WHAT PARTICULAR ASPECTS HE DID VERSUS OTHER TEAM MEMBERS.  
04:02PM 3 Q. OKAY. DURING YOUR DUE DILIGENCE PROCESS, YOU ALSO HIRED  
04:02PM 4 OUTSIDE EXPERTS, DIDN'T YOU?  
04:02PM 5 A. WHEN YOU -- COULD YOU BE A LITTLE MORE SPECIFIC WHEN YOU  
04:02PM 6 SAY "HIRED"?  
04:02PM 7 Q. WELL, YOU PAID THEM TO WORK ON THE DEAL?  
04:02PM 8 A. NOT TO -- WE USE -- WE USE A THIRD -- WE USE THESE  
04:02PM 9 ORGANIZATIONS THAT CONNECT US TO EXPERTS IN DIFFERENT AREAS OF  
04:02PM 10 HEALTH CARE, AND SO WE'LL DO -- WE USE EXPERTS ALL OF THE TIME  
04:03PM 11 FOR A SPECIFIC QUESTION.  
04:03PM 12 BUT I DON'T RECALL HAVING A PAID EXPERT SPECIFIC FOR THE  
04:03PM 13 THERANOS DEAL.  
04:03PM 14 Q. OKAY.  
04:03PM 15 A. BUT WE DID USE OUTSIDE EXPERTS THE WAY WE DO FOR ALL OF  
04:03PM 16 OUR DUE DILIGENCE.  
04:03PM 17 Q. OKAY. SO YOU USED OUTSIDE EXPERTS TO HELP WITH YOUR DUE  
04:03PM 18 DILIGENCE ON THE THERANOS DEAL; CORRECT?  
04:03PM 19 A. YES. YES.  
04:03PM 20 Q. AND ONE OF THOSE WAS MR. CLAMMER; IS THAT RIGHT?  
04:03PM 21 A. HE WAS NOT A PAID OUTSIDE EXPERT, NO.  
04:03PM 22 Q. OKAY. BUT YOU USED HIM FOR HIS EXPERTISE; IS THAT FAIR?  
04:03PM 23 A. WE DID. WE DID ADD HIM AS A MEMBER OF THE TEAM. SO, YES,  
04:03PM 24 HE WAS PART OF THE PROCESS.  
04:03PM 25 Q. OKAY. AND SO WHEN YOU WERE DOING THIS DUE DILIGENCE, ALL

04:03PM 1 OF THESE INDIVIDUALS THAT WE JUST WENT THROUGH, YOU WERE ALL  
04:03PM 2 WORKING TOGETHER AS A TEAM, WEREN'T YOU?  
04:03PM 3 A. WE ALL HAD OTHER RESPONSIBILITIES. SO IT'S -- YOU KNOW,  
04:03PM 4 PART OF BEING ANALYST, YOU HAVE TO PROCESS MULTIPLE THINGS AT  
04:04PM 5 THE SAME TIME.  
04:04PM 6 Q. SO WERE YOU ALL WORKING TOGETHER AS A TEAM WHEN YOU DID  
04:04PM 7 YOUR DUE DILIGENCE ON THERANOS?  
04:04PM 8 A. WE WERE, WE WERE WORKING AS A TEAM, YES.  
04:04PM 9 Q. AND --  
04:04PM 10 THE COURT: AND LET'S -- WHY DON'T WE BREAK NOW FOR  
04:04PM 11 THE DAY?  
04:04PM 12 WE'LL CONTINUE THE EXAMINATION ON FRIDAY, FRIDAY MORNING  
04:04PM 13 IS OUR NEXT DATE, LADIES AND GENTLEMEN.  
04:04PM 14 AND LET ME TELL YOU, WE'LL -- OUR SCHEDULED TIME TO BEGIN  
04:04PM 15 IS AT 9:00 O'CLOCK. I AM MEETING WITH THE LAWYERS BEFORE,  
04:04PM 16 EARLIER, AND I RATHER EXPECT THAT WE'RE GOING TO GO A LITTLE  
04:04PM 17 LONGER, SO WE'LL PROBABLY -- I'M THINKING 9:30 AT THE EARLIEST  
04:04PM 18 IS THE TIME THAT WE'LL START, JUST FOR YOUR SCHEDULING  
04:04PM 19 PURPOSES.  
04:04PM 20 THE BREAKFAST ARRIVES, YOU KNOW, EARLY, SO FIRST COME,  
04:04PM 21 FIRST SERVED ON THAT.  
04:04PM 22 (LAUGHTER.)  
04:04PM 23 THE COURT: BUT I THINK THAT WE'LL START AT ABOUT  
04:04PM 24 9:30, JUST TO GIVE YOU FAIR WARNING.  
04:04PM 25 AND SAME WITH YOU, SIR.

04:04PM 1 THE WITNESS: YES.

04:04PM 2 THE COURT: IF YOU COULD BE HERE SUCH THAT YOU COULD

04:04PM 3 BEGIN AGAIN AT 9:30, THAT WOULD BE GREAT.

04:05PM 4 THE WITNESS: OKAY.

04:05PM 5 THE COURT: THANK YOU.

04:05PM 6 WE'LL BE IN RECESS.

04:05PM 7 BEFORE YOU GO, I REMIND YOU OF THE ADMONITION. DON'T DO

04:05PM 8 ANYTHING TO LEARN ANYTHING ABOUT THIS CASE, ANY INVESTIGATION,

04:05PM 9 AND PLEASE DO NOT DISCUSS OR WATCH OR READ ANYTHING ABOUT THIS

04:05PM 10 CASE.

04:05PM 11 HAVE A GOOD EVENING. WE'LL SEE YOU FRIDAY MORNING. THANK

04:05PM 12 YOU.

04:05PM 13 (JURY OUT AT 4:05 P.M.)

04:05PM 14 THE COURT: MR. GROSSMAN, YOU CAN STAND DOWN. THANK

04:05PM 15 YOU.

04:05PM 16 PLEASE BE SEATED. THANK YOU.

04:06PM 17 ALL RIGHT. THE RECORD SHOULD REFLECT THAT OUR JURY HAS

04:06PM 18 LEFT FOR THE DAY.

04:06PM 19 MR. GROSSMAN HAS LEFT THE COURTROOM.

04:06PM 20 ALL COUNSEL AND MR. BALWANI ARE PRESENT.

04:06PM 21 WE'LL GET TOGETHER AT 8:30, 8:15. IF YOU'RE HERE, WE'LL

04:06PM 22 START A LITTLE EARLY FOR OUR DISCUSSION ON THE PENDING MOTION.

04:06PM 23 MS. WALSH: YES, YOUR HONOR.

04:06PM 24 CAN I RAISE ONE ISSUE WITH THE COURT REGARDING SCHEDULING?

04:06PM 25 AND I DON'T KNOW, THE GOVERNMENT MIGHT ADDRESS THIS.

04:06PM 1 THE COURT: SURE.

04:06PM 2 MS. WALSH: SO WE'RE NOT SURE IF THE GOVERNMENT WAS

04:06PM 3 GOING TO CALL MR. KOVACEVICH. LAST WE KNEW THIS MORNING, THEIR

04:06PM 4 INTENTION WAS TO CALL HIM.

04:06PM 5 WE HAVEN'T MADE A FINAL DECISION YET, BUT WE WILL LIKELY

04:06PM 6 START A DEFENSE CASE ON FRIDAY, AND WE HAVE A WITNESS WHO,

04:06PM 7 BECAUSE OF HER SCHEDULE, CAN REALLY ONLY BE HERE ON FRIDAY OR

04:06PM 8 TWO WEEKS FROM FRIDAY ESSENTIALLY.

04:07PM 9 IT'S NOT A LONG WITNESS, BUT WE WOULD LIKE TO FIT HER IN,

04:07PM 10 IF POSSIBLE.

04:07PM 11 AND I'M WONDERING -- I'D LIKE TO HEAR FROM THE GOVERNMENT

04:07PM 12 AS TO WHAT THEIR INTENTION IS AS TO HOW LONG THEIR CASE IS NOW

04:07PM 13 GOING TO LAST.

04:07PM 14 AND IF IT'S POSSIBLE, IF WE NEED TO STAY LATER ON FRIDAY,

04:07PM 15 WE WOULD MAKE THAT REQUEST TO TRY TO FIT THIS WITNESS IN.

04:07PM 16 THE COURT: WELL, YOU'RE IN CONTROL OF THAT. YOU

04:07PM 17 HAVE CROSS-EXAMINATION. IF YOUR CROSS-EXAMINATION IS ANOTHER

04:07PM 18 20 MINUTES, WE'LL CERTAINLY BE ABLE TO DO EVERYTHING YOU NEED

04:07PM 19 TO DO. YOU'RE IN THE DRIVER'S SEAT.

04:07PM 20 MR. BOSTIC.

04:07PM 21 MR. BOSTIC: SO OF COURSE THE COURT IS CORRECT --

04:07PM 22 EXCUSE ME, THE COURT IS CORRECT, THE DEFENSE HAS THE CLOCK

04:07PM 23 RIGHT NOW.

04:07PM 24 AS FAR AS MR. KOVACEVICH, WE'RE STILL EXPLORING HIS

04:07PM 25 AVAILABILITY FOR FRIDAY, SO WE'LL LET THE DEFENSE KNOW AS SOON

04:07PM 1 AS WE KNOW WHAT IS HAPPENING IN TERMS OF THAT WITNESS.

04:07PM 2 I THINK FOR NOW IT WOULD BE PRUDENT TO PREPARE FOR BOTH

04:07PM 3 POSSIBILITIES, EITHER HIM TESTIFYING OR NOT.

04:08PM 4 THE COURT: OKAY. WELL, YOU'LL MEET AND CONFER AND

04:08PM 5 CONTINUE WITH THE COOPERATIVE SPIRIT THAT YOU HAVE ENGAGED IN

04:08PM 6 THROUGHOUT THIS TRIAL AND WORK THOSE ISSUES OUT.

04:08PM 7 MS. WALSH: SURE. WE WILL, YOUR HONOR.

04:08PM 8 BUT I GUESS I'M GIVING THE COURT A HEADS UP THAT WE MAY

04:08PM 9 REQUEST THAT THE COURT AND THE JURY STAY A LITTLE LATER IF WE

04:08PM 10 CAN TRY TO FIT THIS WITNESS IN.

04:08PM 11 THE COURT: OKAY. WE'RE COMPRESSING FRIDAY, AREN'T

04:08PM 12 WE, BECAUSE, AS I TOLD THE JURY, WE PROBABLY WON'T START UNTIL

04:08PM 13 9:30.

04:08PM 14 MS. WALSH: YEAH.

04:08PM 15 THE COURT: THAT'S JUST A FAIR ESTIMATE IF WE START

04:08PM 16 AT 8:15 OR SOMETHING LIKE THAT. I'M THINKING THAT DISCUSSION

04:08PM 17 WILL TAKE AT LEAST THAT LONG.

04:08PM 18 AND I THINK THE DEFENSE WANTS TO KNOW THE DIRECTION OF

04:08PM 19 THINGS AS SOON AS POSSIBLE.

04:08PM 20 AND BECAUSE IT'S ON A FRIDAY, IT MAY BE THAT, I DON'T

04:08PM 21 KNOW, BUT IT MAY BE THAT YOU DON'T GET AN ANSWER UNTIL

04:09PM 22 MONDAY --

04:09PM 23 MS. WALSH: SURE.

04:09PM 24 THE COURT: -- NEXT WEEK ON THAT.

04:09PM 25 SO THERE'S THAT.

04:09PM 1 AND THEN THERE'S THE -- YOU'RE FINISHING YOUR  
04:09PM 2 CROSS-EXAMINATION. AND I DON'T KNOW IF YOU KNOW HOW LONG  
04:09PM 3 THAT'S GOING TO BE. YOU DON'T HAVE TO TELL ME.  
04:09PM 4 BUT THAT FACTORS INTO WHAT WE'RE GOING TO DO.  
04:09PM 5 THEN, OF COURSE, WE DON'T KNOW IF THE WITNESS IS  
04:09PM 6 AVAILABLE.  
04:09PM 7 IT SOUNDS LIKE WE MAY HAVE COMPETING WITNESSES WITH  
04:09PM 8 SIGNIFICANT LIMITATIONS, EITHER TIME OR HEALTH OR OTHERWISE.  
04:09PM 9 MR. BOSTIC: SO, YOUR HONOR, IT MIGHT BE HELPFUL FOR  
04:09PM 10 US TO MAP OUT WHAT THAT DAY WOULD LOOK LIKE IF MR. KOVACEVICH  
04:09PM 11 DID TESTIFY.  
04:09PM 12 SO, YES, AN ESTIMATE ON REMAINING CROSS FOR THIS WITNESS  
04:09PM 13 WOULD BE HELPFUL.  
04:09PM 14 I CAN TELL THE COURT AND THE DEFENSE THAT THE DIRECT OF  
04:09PM 15 MR. KOVACEVICH WOULD BE LESS THAN AN HOUR, PROBABLY  
04:09PM 16 SIGNIFICANTLY LESS THAN AN HOUR.  
04:09PM 17 SO I'M NOT SURE WHAT THAT WOULD LEAVE THE DAY LOOKING LIKE  
04:09PM 18 IN TERMS OF REMAINING TIME.  
04:09PM 19 WE WOULD ALSO, FROM OUR PERSPECTIVE, WE WOULD BE HAPPY TO  
04:09PM 20 TAKE A WITNESS OUT OF ORDER IN ORDER TO ACCOMMODATE THE DEFENSE  
04:10PM 21 WITNESS'S SCHEDULE SUBJECT TO THE NEED, IF MR. KOVACEVICH  
04:10PM 22 TESTIFIES, TO HAVE HIM KIND OF ON AND OFF THE STAND IN ONE  
04:10PM 23 BLOCK IF WE COULD.  
04:10PM 24 THE COURT: RIGHT.  
04:10PM 25 MR. BOSTIC: WE DON'T WANT HIM TO TRAVEL TO THE

04:10PM 1 COURTHOUSE UNNECESSARILY, AND WE DON'T WANT TO INTERRUPT HIS  
04:10PM 2 TESTIMONY FOR HIS SAKE.

04:10PM 3 BUT SUBJECT TO THAT, WE WOULD BE HAPPY TO ALTER THE ORDER.

04:10PM 4 THE COURT: WELL, THAT'S ANOTHER POSSIBILITY IS TO  
04:10PM 5 TAKE A WITNESS OUT OF ORDER. I CAN'T REMEMBER IF WE'VE DONE  
04:10PM 6 THAT IN THIS CASE.

04:10PM 7 I KNOW IT'S CERTAINLY --

04:10PM 8 MS. WALSH: WE HAVE.

04:10PM 9 THE COURT: YES. AND THE JURY IS AWARE OF THAT.

04:10PM 10 AND THAT'S ANOTHER POSSIBILITY, MS. WALSH, THAT YOU WANT  
04:10PM 11 TO TALK WITH YOUR TEAM ABOUT.

04:10PM 12 MS. WALSH: SURE, SURE.

04:10PM 13 THE COURT: IN ADDITION TO REDUCING YOUR  
04:10PM 14 CROSS-EXAMINATION. I'M SMILING WHEN I SAY THAT. YOU DO  
04:10PM 15 WHATEVER YOU NEED TO DO, BUT YOU'RE IN CONTROL OF THAT, SO --  
04:10PM 16 OKAY.

04:10PM 17 SO YOU'LL DISCUSS, AND AT LEAST YOU'LL SHARE SOME THOUGHTS  
04:10PM 18 ON THAT, AND THEN WE CAN TALK ABOUT IT MORE ON FRIDAY MORNING.

04:11PM 19 MS. WALSH: SOUNDS GOOD.

04:11PM 20 MR. BOSTIC: ONE MORE OTHER POINT, IF I COULD, ON  
04:11PM 21 THE TOPIC OF THE DEFENSE BEGINNING ITS CASE.

04:11PM 22 TO MY KNOWLEDGE, THE GOVERNMENT HAS NOT YET RECEIVED ANY  
04:11PM 23 JENCKS FROM THE DEFENSE.

04:11PM 24 SO I'M NOT SURE IF IT'S APPROPRIATE FOR THE COURT TO ORDER  
04:11PM 25 THAT PRODUCTION AT THIS TIME, BUT IT'S JUST SOMETHING THAT I

04:11PM 1 WANTED TO NOTE FOR THE RECORD.

04:11PM 2 THE COURT: WHAT WOULD YOU LIKE ME TO DO ABOUT THAT,

04:11PM 3 MS. WALSH?

04:11PM 4 MS. WALSH: YOUR HONOR, I WOULD LIKE TO CONFER WITH

04:11PM 5 MY TEAM. I KNOW WE'VE BEEN DISCUSSING IT. SO LET ME JUST

04:11PM 6 CONFER, AND WE CAN LET THE COURT KNOW.

04:11PM 7 THE COURT: CAN YOU, CAN YOU INCLUDE THAT TOPIC IN

04:11PM 8 YOUR DISCUSSION WITH MR. BOSTIC AND HIS TEAM ABOUT WHEN YOU

04:11PM 9 PLAN ON --

04:11PM 10 MS. WALSH: SURE. OF COURSE.

04:11PM 11 THE COURT: -- AND THEN WE'LL GO FROM THERE.

04:11PM 12 OKAY. GREAT.

04:11PM 13 MS. WALSH: THANK YOU.

04:11PM 14 THE COURT: MR. LEACH.

04:11PM 15 MR. LEACH: YOUR HONOR, I'M SORRY. ONE MORE

04:11PM 16 HOUSEKEEPING MATTER.

04:11PM 17 THE COURT: YES. SURE.

04:11PM 18 MR. LEACH: DURING THE EXAMINATION OF SO HAN SPIVEY

04:11PM 19 SEVERAL WEEKS AGO, THE COURT CONDITIONALLY ADMITTED

04:11PM 20 EXHIBIT 4859, WHICH IS BATES NUMBER RDV 012671.

04:12PM 21 IT'S A ONE-PAGE DOCUMENT WITH PROJECTED FINANCIAL

04:12PM 22 STATEMENTS AND SOME HANDWRITING ON IT.

04:12PM 23 THE COURT MAY RECALL IT FROM THE PRIOR TRIAL.

04:12PM 24 THE COURT CONDITIONALLY ADMITTED THE EXHIBIT SUBJECT TO --

04:12PM 25 IT CONDITIONALLY ADMITTED IT.

04:12PM 1 DURING THE EXAMINATION OF LISA PETERSON, WHO WAS THE  
04:12PM 2 WITNESS WITH PERSONAL KNOWLEDGE OF THE DOCUMENT, THE GOVERNMENT  
04:12PM 3 SHOWED HER EXHIBIT 1853, THE FIRST PAGE OF WHICH HAS THE SAME  
04:12PM 4 BATES NUMBER.

04:12PM 5 THE COURT: RIGHT.

04:12PM 6 MR. LEACH: BUT WE USED A DIFFERENT EXHIBIT.

04:12PM 7 I JUST WOULD LIKE THE COURT TO ADVISE THE JURY THAT  
04:12PM 8 WHATEVER THE CONDITIONS ON 4859 HAVE BEEN SATISFIED, AND WE  
04:12PM 9 WOULD LIKE TO HAVE THAT DESCRIBED TO THE JURY BEFORE THE  
04:12PM 10 GOVERNMENT RESTS.

04:12PM 11 THE COURT: THANK YOU.

04:12PM 12 MR. COOPERSMITH: YOUR HONOR, I'M JUST STANDING UP  
04:12PM 13 BECAUSE THAT WAS A WITNESS THAT I HAD --

04:12PM 14 THE COURT: YES.

04:13PM 15 MR. COOPERSMITH: -- EARLIER IN THE TRIAL. SO THANK  
04:13PM 16 YOU.

04:13PM 17 WHAT MR. LEACH IS PROPOSING SOUNDS FINE. I WOULD JUST  
04:13PM 18 LIKE A CHANCE TO LOOK AT THE EXHIBIT AND SEE IT.

04:13PM 19 THE COURT: SURE.

04:13PM 20 MR. COOPERSMITH: I HAVE NO REASON TO DOUBT WHAT  
04:13PM 21 MR. LEACH IS SAYING.

04:13PM 22 BUT IF WE COULD JUST ADVISE MR. LEACH AND THE COURT --

04:13PM 23 THE COURT: WELL, YOU'RE GOING TO -- THIS IS ANOTHER  
04:13PM 24 AGENDA ITEM FOR YOUR MEET AND CONFER AND ON FRIDAY WE'LL TALK  
04:13PM 25 ABOUT IT.

04:13PM 1 MR. COOPERSMITH: THAT SOUNDS GOOD.

04:13PM 2 THE COURT: OKAY. GREAT. THANKS FOR THE HEADS UP.

04:13PM 3 MR. LEACH: I APPRECIATE IT.

04:13PM 4 THE COURT: ALL RIGHT.

04:13PM 5 (COURT ADJOURNED AT 4:13 P.M.)

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3 CERTIFICATE OF REPORTERS  
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7 WE, THE UNDERSIGNED OFFICIAL COURT REPORTERS OF THE  
8 UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
9 CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO  
10 HEREBY CERTIFY:

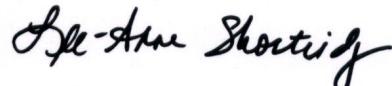
11 THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS  
12 A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE  
13 ABOVE-ENTITLED MATTER.

14   
15

16 

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IRENE RODRIGUEZ, CSR, CRR  
17 CERTIFICATE NUMBER 8076  
18



19 

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LEE-ANNE SHORTRIDGE, CSR, CRR  
20 CERTIFICATE NUMBER 9595  
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DATED: MAY 18, 2022  
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